### United States Court of Appeals

for the Minth Circuit

MILFORD R. BAUMGARDNER and PEARL E. BAUMGARDNER,

Petitioners,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

### Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

MAR 1 9 1957

PAUL P. O'BRIEN, CLE



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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#### APPEARANCES

GEORGE BOUCHARD,
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For the Petitioner.

CHARLES K. RICE,
Asst. U. S. Attorney General;

LEE A. JOHNSON,
Attorney, Department of Justice,
Washington 25, D. C.,

For the Respondent.



## The Tax Court of the United States Docket No. 49897

#### MILFORD R. BAUMGARDNER,

Petitioner,

VS.

## COMMISSIONER OF INTERNAL REVENUE, Respondent.

#### DOCKET ENTRIES

1953

- July 31—Petition received and filed. Taxpayer notified. Fee paid.
- Aug. 3—Copy of petition served on General Counsel.
- Sept.15—Answer filed by General Counsel.
- Sept.15—Request for hearing in Los Angeles, filed by General Counsel.
- Sept.18—Notice issued placing proceeding on Los Angeles Calendar. Service of answer and request made.
- Nov. 2—Reply to answer filed by taxpayer. Copy served.

1954

- Aug. 10—Hearing set Dec. 6, 1954, Los Angeles, California.
- Oct. 26—Notice canceling the hearing.

1955

Jan. 10—Hearing set March 21, 1955, Los Angeles, California.

#### Docket Entries—(Continued)

1955

- Feb. 16—Motion for a continuance, filed by General Counsel.
- Feb. 18—Hearing set 3/9/55, Washington, D. C., on respondent's above motion.
- Mar. 9—Hearing had before Judge Kern on respondent's motion for continuance.

  Granted.
- Mar. 9—Order that respondent's motion is granted and case is stricken from the Los Angeles calendar of 3/21/55 and continued to the 7/5/55 Los Angeles calendar, entered.
- Mar. 25—Hearing set 7/5/55, Los Angeles, California.
- Apr. 18—Notice hearing date changed to 6/20/55, Los Angeles.
- June 21—Hearing had before Judge Black on petitioner's oral motion to consolidate dockets 49897, 49898 and 49899, granted; and on Court's own motion to continue. Continued to next term.
- June 21—Order that case is continued to next term in Los Angeles, California, entered.
- July 13—Transcript of hearing 6/21/55 filed.
- Aug. 4—Hearing set November 28, 1955, Los Angeles.
- Nov. 29, 30,
- Dec. 1—Hearing had before Judge Tietjens on the merits, on respondent's motion to amend answer, granted. Stipulation of facts, motion to amend and amendments to answer, filed at hearing. Served. Briefs 60 days

from 12/1/55, 30 days thereafter, replies.

#### Docket Entries—(Continued)

1955

- Dec. 12—Transcript of hearing 11/29/55 filed.
- Dec. 12—Transcript of hearing 11/30/55 filed.
- Dec. 12—Transcript of hearing 12/1/55 filed.

1956

- Jan. 27—Motion for extension to February 29, 1956, to file brief, filed by respondent. 1/30/56 granted.
- Feb. 24—Brief filed by taxpayer. 3/12/56 copy served.
- Feb. 28—Motion for extension to March 7, 1956, to file brief, filed by respondent. 2/29/56 granted.
- Mar. 7—Respondent's brief filed. 3/8/56 copy served.
- May 9—Memorandum findings of fact and opinion filed, Tietjens, J. Decision will be entered under Rule 50. Served 5/9/56.
- Aug. 28—Agreed computation filed.
- Aug. 29—Decision entered. Tietjens, J. Division 1. Served 8/30/56.
- Nov. 19—Petition for review by United States Court of Appeals, Ninth Circuit, filed by petitioner.
- Nov. 19—Statement of Points filed.
- Nov. 19—Designation of contents of record on review filed.
- Nov. 20—Proof of service of petition for review, statement of points and designation filed.

## The Tax Court of the United States Docket No. 49899

### MILFORD R. BAUMGARDNER and PEARL E. BAUMGARDNER, Husband and Wife,

Petitioners,

vs.

## COMMISSIONER OF INTERNAL REVENUE, Respondent.

#### DOCKET ENTRIES

1953

- July 31—Petition received and filed. Taxpayer notified. Fee paid.
- Aug. 3—Copy of petition served on General Counsel.
- Sept.15—Answer filed by General Counsel.
- Sept.15—Request for hearing in Los Angeles, filed by General Counsel.
- Sept.18—Notice issued placing proceeding on Los Angeles Calendar. Service of answer and request made.
- Nov. 2—Reply to answer filed by taxpayer. Copy served.

1954

- Aug. 10—Hearing set Dec. 6, 1954, Los Angeles, California.
- Oct. 26—Notice canceling the hearing.

#### Docket Entries—(Continued)

1955

- Jan. 10—Hearing set March 21, 1955, Los Angeles, California.
- Feb. 16—Motion for a continuance, filed by General Counsel.
- Feb. 18—Hearing set 3/9/55, Washington, D. C., on respondent's above motion.
- Mar. 9—Hearing had before Judge Kern on respondent's motion to continue. Granted.
- Mar. 9—Order that respondent's motion is granted and case is stricken from the Los Angeles calendar of 3/21/55 and continued to the 7/5/55 Los Angeles, California, calendar, entered.
- Mar. 25—Hearing set 7/5/55, Los Angeles, California.
- Apr. 18—Notice hearing date changed to 6/20/55, Los Angeles.
- June 21—Hearing had before Judge Black on petitioner's oral motion to consolidate dockets 49897, 49898 and 49899, granted; and on Court's own motion to continue. Continued to next term.
- June 21—Order that case is continued to next term in Los Angeles, California, entered.
- July 13—Transcript of hearing 6/21/55 filed.
- Aug. 4—Hearing set November 28, 1955, Los Angeles.
- Nov. 29, 30—Hearing had before Judge Tietjens on the merits.

#### Docket Entries—(Continued)

- 1955
- Dec. 1—Stipulation of facts, filed at hearing.
  Briefs 60 days from 12/1/55 and replies
  30 days thereafter.
- Dec. 12—Transcript of hearing 11/29/55 filed.
- Dec. 12—Transcript of hearing 11/30/55 filed.
- Dec. 12—Transcript of hearing 12/1/55 filed. 1956
- Jan. 27—Motion for extension to February 29, 1956, to file brief, filed by respondent. 1/30/56 granted.
- Feb. 24—Brief filed by taxpayer. 3/12/56 copy served.
- Feb. 28—Motion for extension to March 7, 1956, to file brief, filed by respondent. 2/29/56 granted.
- Mar. 7—Respondent's brief filed. 3/8/56 copy served.
- May 9—Memorandum findings of fact and opinion filed, Tietjens, J. Decision will be entered under Rule 50. Served 5/9/56.
- Aug. 28—Agreed computation filed.
- Aug. 29—Decision entered. Tietjens, J. Division 1. Served 8/30/56.
- Nov. 19—Petition for review by United States Court of Appeals, Ninth Circuit, filed by petitioners.
- Nov. 19—Statement of Points filed.
- Nov. 19—Designation of contents of record on review filed.
- Nov. 20—Proof of service of petition for review, statement of points and designation filed.

## The Tax Court of the United States Docket No. 49897

#### MILFORD R. BAUMGARDNER,

Petitioner,

vs.

#### DIRECTOR OF INTERNAL REVENUE,

Respondent.

#### PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Director of Internal Revenue in his Notice of deficiency (Symbols A:R:90D:LHP) dated May 11th, 1953, and as a basis of his proceeding alleges as follows:

- (1) That petitioner is an individual residing at 406 West 131st Street, Hawthorne, California. The returns for the period here involved were filed with the Collector for the 6th Collection District of California.
- (2) The notice of deficiency was mailed to the petitioner on May 11, 1953; a copy of the deficiency notice and so much of the statement contained therein as is material is attached hereto and marked Exhibit "A."
- (3) The taxes in controversy are income taxes for the calendar years 1945 and 1947 in the aggregate amount of \$1,832.16, and penalty in the amount of \$1,030.96.

- (4) The determination of tax set forth in said notice of deficiency is based upon the following errors:
- (a) Respondent erred in determining petitioner realized a long-term capital gain in 1945 in the amount of \$2,679.52 from the sale of a residence in lieu of \$1,128.50 which was reported in petitioner's income tax return.
- (b) Respondent erred in including in petitioner's return for the year 1945 other income in the amount of \$3,889.56.
- (c) Respondent erred in including in petitioner's income for the year 1947 other income in the sum of \$3,370.78.
- (d) Respondent erred in proposing to assess penalties for each of the years involved under the provisions of Section 293(b) and Section 294(d)(2) of the Internal Revenue Code.
- (e) Respondent erred in proposing for assessment any deficiencies for either of the years involved for the reason that the same are now barred by the provisions of Section 275 of the Internal Revenue Code.
- (5) The facts upon which petitioner relies as the basis of this proceeding are as follows:
- (a) Petitioner realized in 1945 a long-term capital gain on the sale of a residence in the amount of \$1,128.50 and no more, which amount was reported.

This was community income and petitioner reported his one-half thereof in his return for that year.

- (b) Petitioner did not receive in the year 1945 other income in the amount of \$3,889.56, or in any other amount, which was not reported in his return.
- (c) Petitioner did not receive income in 1947 in the amount of \$3,370.78, or any other amount, which was not reported in his return.
- (d) Petitioner's returns for each of the years in question were true and correct at the time he filed them to the best of his knowledge and belief. These returns were not filed with the intent to defeat or evade any tax liability legally due; petitioner did not substantially underestimate his tax for either of the years under declarations which he filed.
- (e) Petitioner filed his Federal income tax return for the year 1945 on or about March 15, 1946, and filed his Federal income tax return for the year 1947 on or about March 15, 1948.

Wherefore, petitioner prays that the Court may hear this petition and determine:

- (1) That there are no deficiencies in income taxes for either of the years involved; and
- (2) That there are no penalties due and owing under the provisions of Sections 293 and 294 of the Internal Revenue Code.

/s/ GEORGE BOUCHARD, Counsel for Petitioner.

Duly verified.

#### EXHIBIT A

Form 1234

U. S. Treasury Department
Office of the Director of Internal Revenue
Head, Audit Division
417 South Hill Street
Los Angeles 13, California

In replying Refer to: A:R:90D:LHP

May 11, 1953.

Mr. Milford R. Baumgardner, 406 West 131st Street, Hawthorne, California.

Dear Mr. Baumgardner:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1945 and December 31, 1947, discloses a deficiency of \$1,832.16 and \$1,030.96 in penalties, as shown in the statement attached. Assessment of such deficiency or deficiencies has been made under the provisions of the internal revenue laws applicable to jeopardy assessments.

In accordance with the provisions of existing internal revenue laws notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and legal holidays are to be counted in computing the 90-day period.

Very truly yours,

#### T. COLEMAN ANDREWS, Commissioner,

By /s/ R. A. RIDDELL, Director.

#### Enclosures:

Statement Form 1276

#### Statement

#### A:R:90D:LHP

Mr. Milford R. Baumgardner 406 West 131st Street Hawthorne, California

Tax Liability for the Taxable Years Ended December 31, 1945, and December 31, 1947

#### Summary of Deficiencies

		Pen	Penalties		
Year	Deficiency	Sec. 293(b)	Sec. 294(d)(2)		
1945 Income tax	\$1,146.97	\$573.49	\$ 73.38		
1947 Income tax	685.19	342.59	41.50		
	\$1,832.16	\$916.08	\$114.88		

Summary of assessments made under the provisions of Internal Revenue laws applicable to jeopardy assessments on April 2, 1953, for the taxable years ended December 31, 1945, and December 31, 1947.

		Penalties				
Year	Deficiency	Sec. 293(b)	Sec. 294(d)(2)	Interest to 4-2-53		
1945 Income to	ax\$1,146.97	\$573.49	\$ 73.38	\$485.12		
1947 Income to	ax 685.19	342.59	41.50	207.58		
Totals	\$1,832.16	\$916.08	\$114.88	\$692.70		

This determination of your income tax and penalty liability has been made upon the basis of information on file in this office.

The above-mentioned penalties have been asserted in accordance with the provisions of the sections of the Internal Revenue Code shown above.

It has been determined that during the calendar years 1945 and 1947 taxable community income was received by you and your wife, Pearl E. Baumgardner, in the amounts shown below which you failed to report in your income tax returns for the years mentioned:

Year 1945		Amount Received \$ 7,779.12	Your Community ½ of Amount Received \$3,889.56
1947		6,741.56	3,370.78
	Totals	.\$14,520.68	\$7,260.34

Your income for the calendar years 1945 and 1947 is increased herein by your community share of the above-mentioned amounts of unreported income.

#### Adjustments to Income Taxable Year Ended December 31, 1945

return	\$2,372.75
Additional income:  (a) Long-term capital gain increased\$ 775.51  (b) Other income unreported 3,889.56	4,665.07
Adjusted gross income as corrected	\$7,037.82
(e) Standard deduction	500.00
Net income as determined	\$6,537,82

.....\$5,826.69

#### Explanation of Adjustments

- (a) It has been determined that you realized a long-term capital gain of \$2,679.52 from the sale of a residence during this taxable year, in lieu of \$1,128.50, the amount reported in your return, an increase of \$1,551.02, your community half of which is \$775.51.
  - (b) This adjustment has been previously explained.
- (c) The standard deduction of \$500.00 is allowed under the provisions of section 23(aa) of the Internal Revenue Code.

C	omputation of Ta	X
Taxable Ye	ar Ended Decemb	er 31, 1945

Net income as determined	
Surtax net income	<b>\$1</b> ,239.83
Net income as determined	<b>,</b> -,
Net income subject to normal tax\$6,037.82  Normal tax at 3%	181.14
Correct income tax liability	\$1,420.97
Income tax liability shown on return  Deficiency of income tax	$\frac{274.00}{\$1,146.97}$
Penalty—Sec. 293(b), I.R.C.	\$ 573.49
Penalty—Sec. 294(d)(2), I.R.C	\$ 73.38
Adjusted gross income as disclosed by return	\$2,955.91
Additional income:  (a) Other income unreported	3,370.78
Adjusted gross income as corrected	\$6,326.69
Allowable deduction:  (b) Standard deduction	500.00

Net income as determined.

#### Explanation of Adjustments

(a) This adjustment has been previously explained.

(b) The standard deduction of \$500.00 is allowed under the provisions of section 23(aa) of the Internal Revenue Code.

#### Computation of Tax Taxable Year Ended December 31, 1947

Taxable Tear Efficed December 51, 1941	
Net income as determinedLess: Exemptions	\$5,826.69 1,000.00
Balance, subject to surtax and normal tax	\$4,826.69
Tentative tax on \$4,826.69\$1,054.94	
Less 5%	
Correct income tax liability	\$1,002.19
Income tax liability shown on return,	φ1,002.13
account No. 2191601	317.00
Deficiency of income tax	\$ 685.19
Penalty—Sec. 293(b), I.R.C.	\$ 342.59
Penalty—Sec. 294(d)(2), I.R.C	\$ 41.50
Received and Filed July 31, 1953, T.C.U.S.	
Served August 3, 1953.	

#### The Tax Court of the United States Docket No. 49899

# MILFORD R. BAUMGARDNER and PEARL E. BAUMGARDNER, Husband and Wife, Petitioners,

vs.

### DIRECTOR OF INTERNAL REVENUE, Respondent.

#### PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Director of Internal Revenue in his Notice of Deficiency (Symbols A:R:90D:LHP) dated May 11, 1953, and as a basis of their proceeding allege as follows:

- (1) That petitioners are husband and wife and reside at 406 West 131st Street, Hawthorne, California. The returns for the period here involved were filed with the Collector for the 6th Collection District of California.
- (2) The notice of deficiency was mailed to the petitioners on May 11, 1953; a copy of the deficiency notice and so much of the statement contained therein as is material is attached hereto and marked Exhibit "A."
- (3) The taxes in controversy are income taxes for the calendar years 1942, 1944, 1946, 1948, 1949, 1950 and 1951 in the aggregate amount of \$14,499.61 and penalty in the amount of \$9,568.43.
- (4) The determination of tax set forth in said notice of deficiency is based upon the following errors:
- (a) Respondent erred in increasing petitioners' income for the year 1942 in the amount of \$3,190.26.
- (b) Respondent erred in adding to petitioners' income for the year 1944 the sum of \$115.03 alleged to represent income received and not reported in their return.
- (c) Respondent erred in determining that petitioners realized a long-term capital gain during the

year 1944 in the sum of \$4,103.98 instead of \$545.00 reported in their return.

- (d) Respondent erred in increasing petitioners' income for the year 1946 in the amount of \$8,071.16.
- (e) Respondent erred in increasing petitioners' income for the year 1948 in the amount of \$15,273.16.
- (f) Respondent erred in increasing petitioners' income for the year 1949 in the amount of \$705.11 alleged to represent income received and not reported in their return.
- (g) Respondent erred in adding to income of petitioners for the year 1949 the sum of \$723.55 alleged to represent rental income received and not reported.
- (h) Respondent erred in increasing petitioners' income for the year 1950 in the amount of \$22,065.94.
- (i) Respondent erred in increasing the income of petitioners for the year 1951 by the amount of \$6,566.77.
- (j) Respondent erred in proposing for assessment penalties for each of the years in question under the provisions of Section 293(b) of the Internal Revenue Code.
- (k) Respondent erred in proposing for assessment penalties for the years 1946, 1948, 1949, 1950 and 1951 under the provisions of Sections 294(d)-(1)(a) and 294(d)(2) of the Internal Revenue Code.

- (1) Respondent erred in proposing for assessment additional income taxes for the years 1942, 1944, 1946, 1948 and 1949 for the reason that such assessment is now barred by the provisions of Section 275 of the Internal Revenue Code.
- (5) The facts upon which petitioners rely as the basis of this proceeding are as follows:
- (a) Petitioners did not receive income in the year 1942 in the amount of \$3,190.26, or in any other sum, which was not reported in their return for that year.
- (b) Petitioners did not receive in the year 1944 interest income in the amount of \$115.03, or in any other sum, which was not reported on their return.
- (c) Petitioners did not realize a long-term capital gain of \$4,103.98 from the sale of property in 1944, but realized only the sum of \$545.00, which was reported in their return.
- (d) Petitioners did not receive in the year 1946 income in the amount of \$8,071.16, or in any other amount, which was not reported in their return for that year.
- (e) Petitioners did not receive income in the year 1948 in the amount of \$15,273.16, or in any other amount, which was not reported in their return.
- (f) Petitioners did not receive interest income in the year 1949 in the amount of \$705.11, or in any other amount, which was not reported in their return.

- (g) Petitioners did not receive in the year 1949 net rental income in the amount of \$723.55, or in any other amount, which was not reported in their return.
- (h) Petitioners did not receive during the year 1950 income in the amount of \$22,065.94, or in any other amount which was not reported in their return.
- (i) Petitioners did not receive during the year 1951 income in the amount of \$6,566.77, or in any other amount, which was not reported in their return.
- (j) Petitioners' returns for each of the years in question were filed in good faith and were to the best of their knowledge and belief true and correct. They were not filed for the purpose of forfeiting or evading any tax legally due.
- (k) Petitioners did not fail to file a Declaration of Estimated Tax within the period prescribed by law and did not substantially underestimate the estimated tax due.
- (1) Petitioners filed their Federal income tax return for the year 1942 on or about March 15, 1943; Petitioners filed their Federal income tax return for the year 1944 on or about March 15, 1945;

Petitioners filed their Federal income tax return for the year 1946 on or about March 15, 1947;

Petitioners filed their Federal income tax return for the year 1948 on or about March 15, 1949; and Petitioners filed their Federal income tax return

for the year 1949 on or about March 15, 1950.

Wherefore, petitioners pray that the Court may hear this petition and determine:

- (1) That there are no deficiencies in income taxes for any of the years involved; and
- (2) That there are no penalties due and owing under the provisions of Sections 293 and 294 of the Internal Revenue Code.

/s/ GEORGE BOUCHARD, Counsel for Petitioners.

Duly verified.

#### EXHIBIT A

Form 1234

U. S. Treasury Department
Office of the Director of Internal Revenue
Head, Audit Division
417 South Hill Street
Los Angeles 13, California

In Replying Refer to: A:R:90D:LHP

May 11, 1953.

Mr. Milford R. Baumgardner and Mrs. Pearl E. Baumgardner Husband and Wife, 406 West 131st Street, Hawthorne, California.

Dear Mr. and Mrs. Baumgardner:

You are advised that the determination of your income tax liability for the taxable years ended De-

cember 31, 1942, 1944, 1946, 1948, 1949, 1950 and 1951 disclose a deficiency of \$14,499.61 and \$9,568.43 in penalties, as shown in the statement attached. Assessment of such deficiency or deficiencies has been made under the provisions of the internal revenue laws applicable to jeopardy assessments.

In accordance with the provisions of existing internal revenue laws notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and legal holidays are to be counted in computing the 90-day period.

Very truly yours,

T. COLEMAN ANDREWS, Commissioner,

By /s/ R. A. RIDDELL, Director.

Enclosures:

Statement Form 1276

#### Statement

#### A:R:90D:LHP

Mr. Milford R. Baumgardner and Mrs. Pearl E. Baumgardner Husband and Wife 406 West 131st Street Hawthorne, California

Tax Liability for the Taxable Years Ended December 31, 1942, December 31, 1944, December 31, 1946, and December 31, 1948, to December 31, 1951, Inclusive

#### Summary of Deficiencies

		Penalties							
Year			Deficiency		Sec. 293(b)	294(d	Sec. )(1)(A)	Section 294(d)(2)	
1942 In	come	tax\$	647.54	\$	323.77	\$ 1	Vone	\$ None	
1944 In	come	tax	886.93		443.47	1	None	None	
1946 In	come	tax	1,994.90		997.45	9	225.52	135.32	
1948 In	come	tax	3,837.82	1	,918.91	1	148.12	268.87	
1949 In	come	tax	326.88		163.44	1	Vone	78.22	
1950 Inc	come	tax	5,426.42	2	,713.21	;	557.80	334.68	
1951 In	come	tax	1,379.12		689.56		168.80	101.29	
		_		_					
To	tals	\$1	4,499.61	\$7	,249.81	\$1,-	100.24	\$918.38	

Summary of assessments made under the provisions of Internal Revenue laws applicable to jeopardy assessments, on April 2, 1953, for the taxable years ended December 31, 1942, 1944, 1946 and 1948 to 1951, inclusive.

	Penalties							
Year			Deficiency	Sec. 293(b)	Sec. 294(d)(1)(A)	Sec. 294(d)(2)	Interest	to
	Income			\$ 323.77	\$ None	\$ None	\$ 390.4	3
44	Income	tax	886.93	443.47	None	None	428.3	1
46	Income	tax	1,994.90	997.45	225.52	135.32	723.0	6
48	Income	tax	3,837.82	1,918.91	448.12	268.87	932.4	3
49	Income	tax	326.88	163.44	None	78.22	59.8	0
50	Income	tax	5,426.42	2,713.21	557.80	334.68	667.2	2
51	Income	tax	1,379.12	689.56	168.80	101.29	86.8	3
		_						_
	Totals	\$	14,499.61	\$7,249.81	\$1,400.24	\$918.38	\$3,288.1	1

This determination of your income tax and penalty liability has been made upon the basis of information on file in this office.

The above-mentioned penalties have been asserted in accordance with the provisions of the sections of the Internal Revenue Code shown above.

It has been determined that during the calendar years shown below taxable community income, in addition to other items shown herein as additions to income reported, was received by you in the following amounts which you failed to report in your income tax returns for the years mentioned.

Year	Amount Received
1942	\$ 3,190.26
1946	8,071.16
1948	15,273.16
1950	22,065.94
1951	6,566.77
Total amount un	reported\$55,167.29

Your income for the calendar years 1942, 1946, 1948 1950 and 1951 is increased herein by the above-mentioned amounts of unreported income.

### Adjustments to Net Income Taxable Year Ended December 31, 1942

Net income as disclosed by return	\$2,630.76
Additional income:	
(a) Other income unreported	3,190.26

#### Explanation of Adjustment

.....\$5,821.0**2** 

(a) This adjustment has been previously explained.

Net income adjusted.....

#### Computation of Tax Taxable Year Ended December 31, 1942

Net Income Adjusted	\$5,821.02
Less: Personal exemption	1,900.00
Balance (surtax net income)	\$3,921.02
Dess: Earned income credit	533.70
Net income subject to normal tax	\$3,387.32
Correct income tax liability	\$ 770.60
account No. 1173138	123.06
Deficiency of income tax	\$ 647.54
Penalty—Sec. 293(b), I.R.C.	\$ 323.77
Adjustments to Income Taxable Year Ended December 31, 1944	
Adjusted gross income as disclosed by	
return	\$3,505.07
Additional income:	
(a) Interest income unreported\$ 115.03 (b) Long-term capital gain increased 3,558.98	3,674.01
Adjusted gross income as corrected	\$7,179.08
Allowable deduction:	
(c) Standard deduction	500.00
Net income as determined	\$6,679.08

#### Explanation of Adjustments

- (a) There is added the amount of \$115.03 representing interest income determined to have been received by you which you failed to report in your income tax return.
- (b) It has been determined that you realized a long-term capital gain of \$4,103.98 from the sale of two pieces of property

during this taxable year, in lieu of \$545.00, the amount reported in your return, an increase of \$3,558.98.

(c) The standard deduction of \$500.00 is allowed under the provisions of section 23(aa) of the Internal Revenue Code.

Computation of Tax Taxable Year Ended December 31, 1944	
Net income as determined\$6,679.08 Less Surtax exemptions	
Surtax net income	\$1,016.56
Net income as determined	
Net income subject to normal tax\$5,679.08  Normal tax at 3%	170.37
Correct income tax liability  Income tax liability shown on return, account No. 2121170	\$1,186.93 300.00
Deficiency of income taxPenalty—Sec. 293(b), I.R.C.	\$ 886.93 \$ 443.47
Adjustments to Income Taxable Year Ended December 31, 1946	
Adjusted gross income as disclosed by return	\$ 4,620.00
Additional income:  (a) Other income unreported	8,071.16
Total	\$12,691.16

(b) Net capital gain decreased	497.98
Adjusted gross income as corrected	\$12,193.18
Allowable deduction:	

Reduction of income:

Net income a	s determined	\$11,693.18

500.00

(c) Standard deduction .....

#### Explanation of Adjustments

- (a) This adjustment has been previously explained.
- (b) It has been determined that you realized a long-term capital gain of \$1,002.02 from the sale of a lot during this taxable year, in lieu of a short-term capital gain of \$1,500.00, as reported in your return, a decrease of \$497.98 in net capital gain.
- (c) The standard deduction of \$500.00 is allowed under the provisions of section 23(aa) of the Internal Revenue Code.

### Computation of Tax Taxable Year Ended December 31, 1946

Net income as determined	\$11,693.18 2,000.00
Balance, subject to surtax and normal tax  Tentative tax on \$9,693.18	\$ 9,693.18
Correct income tax liability	\$ 2,408.90
account No. 2110660	414.00
Deficiency of income tax	\$ 1,994.90
Penalty—Sec. 293(b), I.R.C.	\$ 997.45
Penalty—Sec. 294(d)(1)(A), I.R.C	\$ 225.52
Penalty—Sec. 294(d)(2), I.R.C.	\$ 135.32
Adjustments to Net Income Taxable Year Ended December 31, 1948	
Net income as disclosed by return	\$ 7,721.02
Additional income:  (a) Other income unreported	
Total	\$22,994.18
Additional deduction: (b) Standard deduction increased	142.11
37	100.010.0=

Net income adjusted \$22,852.07

#### Explanation of Adjustments

- (a) This adjustment has been previously explained.
- (b) The standard deduction claimed in your return in the amount of \$857.89 is increased to \$1,000.00, the amount allowable under the provisions of section 23(aa) of the Internal Revenue Code.

### Computation of Tax Taxable Year Ended December 31, 1948

Net income adjustedLess: Exemptions	\$22,852.07 2,400.00
Balance, subject to surtax and normal tax	\$20,452.07
One-half of \$20,452.07	\$10,226.03
Tentative tax on \$10,226.03\$2,725.89	
Less reduction under Sec. 12(e), I.R.C 347.11	
Total normal tax and surtax on one-half	0.070.70
of net income	2,378.78
Combined normal tax and surtax	4 7 E 7 E C
(\$2,378.78 x 2)	4,757.56
Correct income tax liability	4,757.56
Income tax liability shown on return, account No. 3203537	919.74
account no. 5205557	313.14
Deficiency of income tax	\$ 3,837.82
Penalty—Sec. 293(b), I.R.C.	\$ 1,918.91
Penalty—Sec. 294(d) (1) (A), I.R.C	\$ 448.12
Penalty—Sec. 294(d)(2), I.R.C	\$ 268.87
	•
Adjustments to Net Income	
Taxable Year Ended December 31, 1949	
Net income as disclosed by return	\$10,436.47
Additional income:	·
(a) Interest income unreported\$705.11	
(b) Rental income unreported	1,428.66
(b) Itomai monio antopotoa	
Net income adjusted	\$11,865.13

#### Explanation of Adjustments

- (a) There is added the amount of \$705.11 representing interest income determined to have been received by you during this taxable year which you failed to report in your income tax return.
- There is added the amount of \$723.55 representing net rental income determined to have been received by you during this taxable year which you failed to report in your income tax return. The amount of \$723.55 is computed as follows:

Gross rental income..... \$1,275.77 Less expenses:

Taxes	(3/4ths	of	\$93.92)	70.44
Depre	eiation			
$(\frac{3}{4}$ ths	off \$32	25.0	0)	243.75
Insura	nee			41.85

## Computation of Tax Taxable Year Ended December 31, 1949

552.22

723.55

Net income adjusted	\$ 11,865.13
Less: Exemptions	2,400.00
Balance, subject to surtax and normal tax	\$ 9,465.13
One-half of \$9,465.13	\$ 4,732.56
Tentative tax on \$4,732.56\$1,030.47	
Less reduction under Sec. 12(e), I.R.C 143.66	
Total normal tax and surtax on one-half	
of net income	\$ 886.81
Combined normal tax and surtax	
(\$886.81 x 2)	\$ 1,773.62
Correct income tax liability	\$ 1,773.62
Income tax liability shown on return,	
account No. 3055321	1,446.74
Deficiency of income tax	\$ 326.88
Penalty—Sec. 293(b), I.R.C.	\$ 163.44
Penalty—Sec. 294(d)(2), I.R.C.	\$ 78.22

Adjustments to Income	
Taxable Year Ended December 31, 1950	
	\$ 4,996.29
Adjusted gross income as disclosed by return Additional income:	. ,
(a) Other income unreported	22,065.94
Adjusted gross income as corrected	
(b) Miscellaneous deductions	1,728.11
Net income as determined	\$25,334.12
Explanation of Adjustments	
(a) This adjustment has been previously explain	ban
(b) Miscellaneous deductions aggregating \$1,728 lowed as follows:	
Contributions\$	500.00
Interest	78.03
Taxes	350.08
Legal fees	800.00
Legal rees	
Total\$1	,728.11
Computation of Tax	
Taxable Year Ended December 31, 1950	
Net income as determined	\$25,334.12
Less: Exemptions	2,400.00
Balance, subject to surtax and normal tax	\$22,934.12
One-half of \$22,934.12	11,467.06
Tentative tax on \$11,467.06\$3,197.48	
Less reduction under Sec. 12(c), I.R.C 303.77	
Total normal tax and surtax on one-half	
of net income	\$ 2,893.71
Combined normal tax and surtax	
(\$2,893.71 x 2)	\$ 5,787.42
Correct income tax liability	\$ 5,787.42
Income tax liability shown on return,	
account No. 2907507	361.00
Deficiency of income tax	\$ 5,426.42
Penalty—Sec. 293(b), I.R.C.	\$ 2,713.21
Penalty—Sec. 294(d)(1)(A), I.R.C	\$ 557.80
T	1 00 1 00

Penalty—Sec. 294(d)(2), I.R.C. .....

\$

334.68

#### Adjustments to Net Income Taxable Year Ended December 31, 1951

Net income as disclosed by return	\$ 6,132.95
Additional income:  (a) Other income unreported	6,566.77
Total	\$12,699.72
Additional deductions:	
(b) Taxes\$464.13	
(c) Legal fees	834.13
Net income adjusted	\$11,865.59

#### Explanation of Adjustments

- (a) This adjustment has been previously explained.
- (b) A deduction of \$464.13 is allowed for real and personal property taxes, not claimed in your return.
- (c) A deduction of \$370.00 is allowed for legal fees, not claimed in your return.

## Computation of Tax Taxable Year Ended December 31, 1951

Net income adjusted	\$11,865.59
Less: Exemptions	1,800.00
Balance, subject to surtax and normal tax	\$10,065.59
One-half of \$10,065.59	\$ 5,032.79
Total normal tax and surtax on one-half	
of net income	\$ 1,134.85
Combined normal tax and surtax	
(\$1,134.85 x 2)	\$ 2,269.70
Correct income tax liability	\$ 2,269.70
Income tax liability shown on return,	
account No. 221150162	890.58
Deficiency of income tax	\$ 1,379.12
Penalty—Sec. 293(b), I.R.C.	\$ 689.56
Penalty—Sec. 294(d)(1)(A), I.R.C	\$ 168.80
Penalty—Sec. 294(d)(2), I.R.C	\$ 101.29

Received and Filed July 31, 1953, T.C.U.S. Served August 3, 1953.

[Title of Tax Court and Cause.]

### Docket No. 49897

#### ANSWER

The Commissioner of Internal Revenue, by his attorney, Kenneth W. Gemmill, Acting Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayer, admits, denies and alleges as follows:

- (1), (2) and (3) Admits the allegations contained in Paragraphs (1), (2) and (3) of the petition.
- (4) Denies the allegations of error contained in Paragraph (4) of the petition and all subparagraphs of Paragraph (4) of the petition.
- (5) (a) to (d), inclusive. Denies the allegations contained in subparagraphs (a) to (d), inclusive, of Paragraph (5) of the petition.
- (e) For lack of sufficient information, the respondent denies the allegations contained in subparagraph (e) of Paragraph (5) of the petition.
- (6) Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.

For further answer to the petition herein, respondent alleges:

(7) That for the taxable years 1945 and 1947 the petitioner had additional income from the sources

and in the amounts particularly set forth in the statement contained in the statutory notice of deficiency herein (which by this reference is hereby incorporated herein) and in the attached net worth statement (which by this reference is hereby incorported herein).

(8) That for the taxable years in question the following schedule shows petitioner's true income tax liability, the amounts reported as income tax liability, the deficiency, and the penalty under Section 293(b), Internal Revenue Code:

Taxable Year	True Liability	Reported Liability	Deficiency	Penalty Section, 293(b)
1945	\$1,420.97	\$274.00	\$1,146.97	\$573.49
1947	1,002.19	317.00	685.19	342.59

(9) That petitioner well knew that he had derived income and incurred income tax liability as hereinabove set forth, and by reason thereof, the return as filed by the petitioner for each of the taxable years 1945 and 1947 is a false and fraudulent return filed with intent to evade tax, and the deficiency in income tax for each of said years is due to fraud with intent to evade tax.

Wherefore, it is prayed the petitioner's appeal be denied and the deficiencies in tax as determined by the Commissioner and as set forth in the statutory notice of deficiency be in all respects approved; that the 50 per cent fraud penalty under Section 293(b) and the penalty under Section 294(d)(2) be added thereto and approved, claim for which penalties is hereby made.

# /s/ KENNETH W. GEMMILL, E.C.C.

Acting Chief Counsel,
Internal Revenue Service.

## Of Counsel:

B. H. NEBLETT, Regional Counsel;

E. C. CROUTER,
Acting Appellate Counsel;

JOSEPH G. WHITE, JR.,
Special Attorney,
Internal Revenue Service.

# Milford R. Baumgardner

Docket No. 49897

Net Worth Statement Taxable Years 1945 and 1947

	1945	1947
Net Worth at End of Year	\$34,434.60	\$51,283.18
Net Worth at Beginning of Year	21,679.44	43,129.80
Increase	\$12,755.16	\$ 8,153.38
Living Expenses	4,000.00	4,500.00
Total	\$16,755.16	\$12,653.38
Less Non-taxable Income ½ Correct	$\operatorname{ed}$	
Capital Gain	2,679.52	0-
Corrected Adjusted Gross Income	\$14,075.64	\$12,653.38
½ to Husband—½ to Wife		\$ 6,326.69
Adjusted Gross Income per Return	\$ 2,372.75	\$ 2,955.91

Understatement of Adjusted Gross	
Income\$ 4,665.07	\$ 3,370.78
Less Portion of Understatement of Adjusted Gross Income Attributable to	
Understatement of Capital Gain 775.51	0
Other Income Unreported (Statutory	+ 0.050 50
Notice of Deficiency)\$ 3,889.56	\$ 3,370.78 ======
Filed September 15, 1953, T.C.II.S.	

# [Title of Tax Court and Cause.]

# Docket No.49899

#### ANSWER.

The Commissioner of Internal Revenue, by his attorney, Kenneth W. Gemmill, Acting Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpavers, admits, denies and alleges as follows:

- (1), (2) and (3) Admits the allegations contained in Paragraphs (1), (2) and (3) of the petition.
- (4) Denies the allegations of error contained in Paragraph (4) of the petition and all subparagraphs of Paragraph (4) of the petition.
- (5) (a) to (k), inclusive. Denies the allegations contained in subparagraphs (a) to (k), inclusive, of Paragraph (5) of the petition.

- (1) For lack of sufficient information, the respondent denies the allegations contained in subparagraph (1) of Paragraph (5) of the petition.
- (6) Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.

For further answer to the petition herein, respondent alleges:

- (7) That for the taxable years 1942, 1944, 1946 and 1948 through 1951 the petitioners had additional income from the sources and in the amounts particularly set forth in the statement contained in the statutory notice of deficiency herein (which by this reference is hereby incorporated herein) and in the attached net worth statement (which by this reference is hereby incorporated herein).
- (8) That for the taxable years in question the following schedule shows the petitioners' true income tax liability, the amounts reported as income tax liability, the deficiency, and the penalty under Section 293(b), Internal Revenue Code:

Taxable Year	True Liability	Reported Liability	Deficiency	Penalty Section 293(b)
1942	\$ 770.60	\$ 123.06	\$ 647.54	\$ 323.77
1944	1,186.93	300.00	886.93	443.47
1946	2,408.90	414.00	1,994.90	997.45
1948	4,757.56	919.74	3,837.82	1,918.91
1949	1,773.62	1,446.74	326.88	163.44
1950	5,787.42	361.00	5,426.42	2,713.21
1951	2,269.70	890.58	1,379.12	689.56

(9) That petitioners well knew that they had derived income and incurred income tax liability as

hereinabove set forth, and by reason thereof, the return as filed by the petitioners for each of the taxable years 1942, 1944, 1946 and 1948 through 1951 is a false and fraudulent return filed with intent to evade tax, and the deficiency in income tax for each of said years is due to fraud with intent to evade tax.

(10) That the petitioners filed their income tax return for the taxable years 1948 and 1949 on March 1, 1948, and April 15, 1949, respectively, with the Collector of Internal Revenue for the Sixth District of California at Los Angeles. In said returns petitioners omitted from gross income amounts properly includible therein which are in excess of 25 per cent of the amounts of the gross income stated in the respective returns within the provision of Section 275(c) of the Internal Revenue Code. The statutory notice of deficiency herein was mailed on May 11, 1953, and previously on April 2, 1953, the entire deficiencies and penalties as set forth therein for the taxable years 1948 and 1949, were assessed under the provisions of the Internal Revenue Code applicable to jeopardy assessments, both dates being within five years of the date of the filing of said returns, and the proceeding and assessment against the petitioners is not barred by the provisions of Section 275 of the Internal Revenue Code.

Wherefore, it is prayed the petitioners' appeal be denied and the deficiencies in tax as determined by the Commissioner and as set forth in the statutory notice of deficiency be in all respects approved; that the 50 per cent fraud penalty under Section 293(b) and the penalties under Section 294(d)(1)(A) and Section 294(d)(2) be added thereto and approved, claim for which penalties is hereby made.

/s/ KENNETH W. GEMMILL, E.C.C.

Acting Chief Counsel, Internal Revenue Service.

Of Counsel:

B. H. NEBLETT, Regional Counsel;

E. C. CROUTER,
Acting Appellate Counsel;

JOSEPH G. WHITE, JR.,
Special Attorney,
Internal Revenue Service.

Filed September 15, 1953, T.C.U.S.

Net Worth Statement Taxable Years 1942, 1946, 1948, 1950, 1951 Docket No. 49899

Com	mission	ner of Inter	nal Re	venue	39
1951 \$97,723.07 90,945.11	\$ 6,777.96 8,145.26	\$14,923.22 1,197.50*	\$13,725.72 7,158.95	\$ 6,566.77	\$ 6,566.77 f Net Worth.
1950 \$90,945.11 70,196.92	\$20,748.19 6,906.42	\$27,654.61 512.50* 70.88	\$27,062.23 4,996.29	\$22,065.94	\$22,065.94 
1948 \$70,275.24 51,283.18	\$18,992.06 4,860.01	\$23,852.07 0-	\$23,852.07 8,578.91	\$15,273.16 —0—	\$15,273.16
1946 \$43,129.80 34,434.60	\$ 8,695.20 4,500.00	\$13,195.20 0 1,002.02	\$12,193.18 4,620.00	\$ 7,573.18 497.98	\$ 8,071.16 ===================================
1942 Net Worth at End of Year\$14,273.76 Net Worth at Beginning of Year 10,367.85	iving Expenses \$3,905.91	Total \$6,405.91  Less Pax-free Income—1/2 of Long-term Capital gain ——0—	Corrected Adjusted Gross Income	Understatement of Adjusted Gross Income	Other Income Unreported (Statutory Notice of Deficiency)

[Title of Tax Court and Cause.]

Docket No. 49897

#### REPLY

Petitioner replying to the affirmative allegations contained in Respondent's Answer, admits, denies and alleges as follows:

- (7) Denies the allegations of Paragraph (7).
- (8) Denies the allegations of Paragraph (8) except the allegation as to the amount of income tax liability reported by petitioner for the years in question.
  - (9) Denies the allegations of Paragraph (9).

Wherefore, it is prayed that respondent's determination of deficiencies and penalties be denied, and that the prayer of petitioner's Petition be granted.

/s/ GEORGE BOUCHARD, Counsel for Petitioner.

Received and filed November 2, 1953, T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 49899

#### REPLY

Petitioners replying to the affirmative allegations contained in Respondent's Answer, admit, deny and allege as follows:

- (7) Deny the allegations of Paragraph (7).
- (8) Deny the allegations of Paragraph (8) except the allegation as to the amount of income tax liability reported by petitioners for the years in question.
  - (9) Deny the allegations of Paragraph (9).
- (10) Admit the allegations of Paragraph (10) except petitioners deny that they omitted from gross income amounts properly includable therein which are in excess of twenty-five per cent (25%) of the amounts of gross income stated in their respective returns for the years involved. Petitioners allege that the proceedings and assessments against them are barred by the provisions of Section 275 of the Internal Revenue Code.

Wherefore, it is prayed that respondent's determination of deficiencies and penalties be denied, and that the prayer of Petitioners' petition be granted.

/s/ GEORGE BOUCHARD, Counsel for Petitioners.

Received and filed November 2, 1953. T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 49897

# AMENDMENTS TO ANSWER

Comes now the Commissioner of Internal Revenue, by his attorney, John Potts Barnes, Chief

Counsel, Internal Revenue Service, and amends the answer heretofore filed in this proceeding in the following particulars, to wit:

Paragraph (8) of the answer is amended to read as follows:

(8) That for the taxable years in question the following schedule shows petitioner's true income tax liability, the amounts reported as income tax liability, the deficiency, the penalty under Section 293(b) and the penalty under Section 294(d)(2), Internal Revenue Code of 1939:

Taxable 1945	True Liability	Reported Liability	Deficiency	Penalty Sec. 293(b)	Penalty Sec. 294(d)(2)
1945	\$1,420.97	\$274.00	\$1,146.97	\$573.49	\$ 73.38
1947	2,243.68	317.00	1,926.68	963.34	115.98

The respondent hereby claims the aforesaid increased deficiencies for the taxable year 1947 in Federal income tax and penalties.

The Wherefore clause of the answer is amended to read as follows:

Wherefore it is prayed that the petitioner's appeal be denied and the deficiencies in tax and penalties, including the increased deficiency in tax and penalty for the taxable year 1947, be approved.

# /s/ JOHN POTTS BARNES, R.E.M., Chief Counsel, Internal Revenue Service.

Filed at hearing November 30, 1955.

# [Title of Tax Court and Cause.]

Docket Nos. 49897, 49898, 49899

# MEMORANDUM FINDINGS OF FACT AND OPINION

The Commissioner determined the following deficiencies in income tax and additions to tax:

Against petitioners Milford R. Baumgardner and Pearl E. Baumgardner, husband and wife:

		Additions to Tax		
Year	Deficiency	Sec. 293(b)	Sec. 294(d)(1)(A)	Sec. 294(d)(2)
1942	 \$ 647.54	\$ 323.77	\$ None	\$ None
1944	 886.93	443.47	None	None
1946	 1,994.90	997.45	225.52	135.32
1948	 3,837.82	1,918.91	448.12	268.87
1949	 326.88	163.44	None	78.22
1950	 5,426.42	2,713.21	557.80	334.68
1951	 1,379.12	689.56	168.80	101.29

### Against petitioner Milford R. Baumgardner:

1945	\$1,146.97	\$ 573.4	9 \$	73.38
1947	685.19	342.5	9	41.50
Agai	nst petitioner Pearl E.	Baumgardn	er:	
1945	\$1,146.97	\$ 573.4	9 \$	73.38
1947	685.19	342.5	9	41.50

In an amended answer the Commissioner claims increased deficiencies for the year 1947, both in dockets 49897 and 49898, as follows:

	Add	itions to Tax-
Tax	Sec. 293(b)	Sec. 294(d)(1)(A)
\$1,926.68	 \$963.34	\$115.98

The questions involved are whether petitioners reported all of their income for the years in question; whether the additional assessments for the years in question, with the exception of 1950 and 1951, are barred by Section 275 of the Internal Revenue Code of 1939; whether any part of the deficiencies was due to fraud; and whether the additions to tax for failure to file declarations of estimated tax and for substantial underestimate of estimated tax were properly made. This latter issue was raised by the pleadings, but no evidence was introduced other than evidence disputing the deficiencies upon which the additions to tax were based.

# Findings of Fact

The stipulated facts are so found and the stipulation and the exhibits referred to therein are incorporated by reference.

During the taxable years petitioners were husband and wife. They resided in the City of Hawthorne, California. For the years 1942, 1943, 1944 and 1946, Milford (hereafter sometimes referred to as petitioner) filed separate returns in which he claimed his wife as an exemption. For 1945 and 1947 petitioner and Pearl filed separate returns on a community property basis. For 1948 to 1951, inclusive, joint returns were filed. All returns were filed with the Collector of Internal Revenue for the Sixth District of California.

Petitioner was born in 1903. He came to California from Oklahoma in 1924. In Oklahoma he had been variously employed by a transfer company, a grocery firm, and as a motion picture operator. After coming to California he worked as a dish-

washer in a restaurant and in a pool hall. He was also employed in the Hawthorne Fire Department at a small salary. He and Pearl were married in 1927 and in that year he became a member of the Hawthorne police force. He remained on the force, except for a few short periods, until his retirement in 1953. He was Chief of Police for the City of Hawthorne from 1937 until his retirement. After her marriage, Pearl remained at home as a house-wife and had no income except from the operation of a dress shop from March, 1948, to May, 1950.

For the years 1925 to 1951, inclusive, petitioner earned the following income from the City of Hawthorne:

1925\$ 45.00
1926
1927
1928
1929 1,920.00
1930
1931 2,068.06
1932 1,561.84
<b>1933</b> 0
1934
1001
1935
•
1935
1935       1,570.00         1936       1,609.24
1935       1,570.00         1936       1,609.24         1937       1,768.02
1935       1,570.00         1936       1,609.24         1937       1,768.02         1938       2,236.69

1942	\$2,400.84
1943	2,775.09
1944	2,820.07
1945	3,066.99
1946	
1947	3,911.83
1948	4,213.76
1949	4,507.21
1950	
1951	6,061.70

Petitioners filed no federal income tax returns for the years 1930 to 1939, inclusive. For the years 1940 and 1941 petitioner filed returns showing no tax. Pearl filed no returns. Prior to 1942 petitioners had never paid an income tax.

In June of 1937 petitioner applied to the Bank of America for a loan of \$200 to pay off another obligation with the Bank which then had a balance of \$65.98 and to take care of funeral expenses of \$140. This loan was rejected. On the loan application, which was signed by the petitioner, appears the information that there was at this time \$250 owing by the petitioner to Acme Loan which was being paid off in monthly installments of \$32.08, \$105 owing to Inglewood Furniture which was being paid off in monthly installments of \$5, and \$70 owing to Federal Outfitting Company which was being paid off in monthly installments of \$4. On this application petitioner listed no other income or no source of income other than from the Police De-

partment, though the application specifically asked for this information.

In April of 1938 petitioner applied to the Bank of America for a personal loan of \$200 for the purpose of taking a vacation trip to Oklahoma. On the loan application, which was signed by the petitioner, appears the information that petitioner owed \$40 to the Marbro Department Store which was being paid off in \$5 monthly installments and also owed \$40 to the Inglewood Furniture Company which was being paid off in monthly installments of \$5. On this application petitioner listed no other income or source of income other than from the Police Department, though the loan application specifically asked for such information.

In January of 1939, petitioner negotiated a loan of \$480.30 from the Bank of America to refinance a used 1938 Chevrolet and contracted to make payments of \$32.02 per month. On the purchase statement signed by petitioner he listed as income only a salary of \$185 per month and listed nothing under other income or source of other income.

In an application for a loan on property in 1941 signed by both petitioners their annual income is stated to be \$2,400.

An analysis of the records of the Bank of America where petitioners carried accounts made by a special agent engaged in the investigation leading up to the deficiencies herein, showed little activity,

no large balances and no large deposits or withdrawals during the years 1940 to 1944, inclusive.

In 1946 petitioner purchased for Jim Bruno a one-half interest in the Beacon Cafe. Petitioner put up the money for this transaction but was reimbursed by Bruno. The following year the other half interest was also purchased for Bruno. Petitioner had no interest in the cafe.

By gift from another partner petitioner became the owner of a 5 per cent limited partnership interest in a poker club, called the Embassy Club, in the City of Hawthorne in 1951. On December 31, 1951, there was a balance of \$673.06 in petitioner's capital account in the club.

Petitioner kept no records of real estate transactions, the poker club, rentals, interest, dividends or "commissions," the latter being reported on returns for 1947, 1948, and 1949 in rounded amounts of \$2,000, \$3,000, and \$6,000, respectively.

Petitioners received interest income during the taxable years from savings accounts, trust deeds and a note in the following amounts:

1944	\$ 115.03
1945	 768.77
1946	 1,093.39
1947	 929.74
1948	 904.09
1949	 705.11
1950	 626.18
1951	 530.53

Most of this interest was collected by a bank and credited to the petitioners' account. It was not reported on the tax returns.

During 1949 petitioners received \$1,550 in rentals. Of this sum \$1,250 was paid by the tenant to a bank and credited on petitioners' account. The remainder was paid to petitioner by check. These amounts were not reported on the tax return for 1949.

Petitioners received dividend income in the years 1943 to 1948, inclusive, and in 1951 in amounts ranging from \$12.50 to \$50 which were unreported on the tax returns for those years.

Petitioner was entitled to a distributable share in the amount of \$1,126.81 in 1951 from the poker club in which he was a limited partner. He did not report this amount on his tax return.

Petitioners sold two properties in 1944 reporting a gain on their income tax return of \$430 on one piece and \$780 on the other. These sales actually resulted in gains of \$4,527.28 and \$2,136.26, respectively. In 1945 another piece of property was sold on which there was a reported gain of \$2,257. The actual gain was \$5,359.05.

In determining the deficiencies herein the Commissioner used a schedule of petitioners' assets and liabilities from which their net worth was computed as follows:

12/31/40	\$ 9,358.67
12/31/41	10,367.85
12/31/42	

12/31/43	\$15,219.48
12/31/44	
12/31/45	34,434.66
12/31/46	43,129.80
12/31/47	51,283.18
12/31/48	67,375.44
12/31/49	
12/31/50	
12/31/51	98,123.27

This schedule contained an item "Investment-Beacon Cafe" which was carried for the year ended December 31, 1946, at \$13,547.26 and for each of the following years through December 31, 1951, at \$16,842.26. Petitioner had no investment in the Beacon Cafe in those years.

It also carried an item of \$100 "Cash on hand" in each of the years in question.

Petitioners had cash on hand of \$5,000 for each of the years ended December 31, 1940, through December 31, 1944, and \$3,000 for each of the years ended December 31, 1945, through December 31, 1951.

The schedule also carried an item in the year ended December 31, 1951, of \$673.06 entitled "Embassy Club." This item represents petitioners' balance in his capital account in the club.

The above three items affecting net worth are the only disputed items in the net worth schedule. In other respects the schedule of assets and liabilities (Exhibit 1-A included herein by reference) is found to be true and accurate, as is the schedule of living expenses (Exhibit 2-B, also included herein by reference). Our findings above with respect to the disputed items appearing on the schedule of assets and liabilities will be given effect in a Rule 50 computation.

Statory notices of deficiency were mailed to petitioners on May 11, 1953.

The returns for each of the years in which there is a deficiency, except those for the years 1945 and 1947 filed by Pearl, were false or fraudulent with intent to evade tax and part of the deficiency in each of such years was due to fraud with intent to evade tax.

# Opinion

# Tietjens, Judge:

The Commissioner determined the tax liability of petitioners for the years in question by the net worth method for all years except 1944 and 1949. For the latter years the deficiencies were determined on the basis of specific items of unreported income. So determined, petitioners' taxable income exceeded their reported income as follows:

Year 1942	Net Worth Method \$ 3,190.26	Specific Item
	——————————————————————————————————————	
1944	2,160.41	\$3,674.01
1945	8,804.76	
1946	7,535.12	
1947	15,042.74	
1948	12,231.15	
1949	1,529.86	1,428.66
1950	20,837.46	,
	5,938.12	

The assessment of taxes for all of the years, except 1950 and 1951, is barred by the statute of limitations unless the returns were fraudulent with intent to evade tax. Whether this was so is a question of fact with the burden on the Commissioner to prove fraud by clear and convincing evidence. This burden, we think, has been carried with respect to all returns, except those of Pearl filed for the years 1945 and 1947. Assessments against her for those years are therefore barred.

Computations were introduced in evidence by stipulation showing petitioners' net worth as ascertained by the Commissioner's investigation at the end of 1940 and each of the years before us. Petitioners concede that these computations are substantially correct but complain in three respects with reference to the schedule of assets, namely (1) cash on hand, (2) investment in the Beacon Cafe, and (3) the item of \$673.06, "Embassy Club" in 1951. Petitioners also objected to several items in the schedule of living expenses which entered into the net worth computation but no evidence was introduced bearing on these items.

The disputed items will be commented on separately.

# Cash on Hand

The Commissioner determined that petitioners had \$100 cash on hand at the beginning and end of each of the taxable years. Petitioner testified, however, that he had accumulated \$2,000 to \$3,000 in

eash when he came to Oklahoma and that by 1939 he had made \$15,000 to \$16,000 as profit by dealing in defaulted bearer bonds of the City of Hawthorne. We are willing to believe that petitioner did invest in these bonds which at times sold for as little as ten to fourteen cents on the dollar. His testimony in this respect is corroborated by the witness Travers who was in charge of the municipal bond department of a Los Angeles investment firm which dealt in the Hawthorne bonds. Travers testified in a general way that petitioner bought bonds in an amount ranging from \$15,000 to \$35,000 par value. He in no way, however, testified as to the price paid by petitioner for the bonds or that he knew of any profit made by petitioner as a result of his purchases or sales. There is no evidence as to how long petitioner kept his bonds, or as to their maturity dates and he was vague as to whether he had held them to maturity or whether they were sold and the price for which they were sold. The investment house records which would have shown purchases by petitioner from Travers had he made them did not show any such transactions. We cannot accept this testimony as establishing that petitioner accumulated cash in anywhere near the amount claimed as profits. His income tax returns reported no such profit. His borrowing from banks in the period just before 1942 in small amounts tends to show no such accumulation of cash by the date of the opening net worth computation and we do not believe petitioner's claim that he kept a large cash hoard hidden at times under the corners of rugs in his house and

at other times carried it in a money belt. We do believe, however, that petitioner had a substantially larger sum of cash during the years involved than the Commissioner's computation shows and after careful consideration of all the evidence on this point we have found as a fact that petitioner did have cash in the amount of \$5,000 on December 31, 1940, and at the end of each of the years 1941, 1942, 1943, and 1944, and that at the end of each of the taxable years thereafter, he had cash in the amount of \$3,000. The net worth computations should be adjusted to reflect these findings.

#### Beacon Cafe

As to this asset the Commissioner contends that petitioner was a silent partner owning 50 per cent of the Beacon Cafe from January 10, 1947, to March 3, 1948, and that thereafter he became sole owner by the purchase of the other half interest. Petitioner testified that he had entered into the cafe transaction as a "front" for Jim Bruno and that he had been reimbursed by Bruno for the cash used in the purchase. Bruno had died before the hearing of the case and we have no testimony from him. The evidence with regard to the purchase of the cafe and of petitioner's part in it is indeed confusing. Petitioner's testimony, however, is corroborated in some respects by other witnesses. After carefully weighing all the evidence bearing on the purchase and ownership of the cafe we have found as a fact that petitioner had no interest in the Beacon Cafe. Accordingly, it should be eliminated as an asset of petitioner's in the net worth computation.

# Embassy Club

Petitioner contends this item of \$673.06 appearing in the year ended December 31, 1951, should not be treated as an asset in that year. However, the evidence is convincing that petitioner was the owner of a 5 per cent limited partnership interest in the Embassy Club in the year 1951 and that the item of \$673.06 remained on the partnership books at the end of the year to the credit of petitioner's capital account. We perceive no reason for not treating the amount as an asset of petitioner's at the end of 1951.

The foregoing adjustments can be given effect in a Rule 50 computation. Except for the year 1946 it is apparent they will not materially affect the deficiencies as determined. With these adjustments we find the net worth computations as reliable as net worth computations ever can be. The fact that several items therein have been attacked by petitioner and that to some extent we have found the attack to be meritorious would not justify us in disregarding the computations in their entirety.

### Fraud

On the fraud issue, we are faced with underreporting of income in substantial amounts over a number of years. While fraud is never presumed and the mere understatement of income alone may be insufficient evidence of fraud, yet consideration of the record as a whole convinces us that the returns here involved, with the exception of those filed by Pearl, were fraudulent with intent to evade tax and that part of the deficiencies in each year were due to fraud. Our conclusion in this respect is based, among other things, on our observation of the witnesses, our appraisal of their credibility, the demonstrated increase in net worth over the years without satisfactory explanation of failure to report actual income, the conceded failure to report true gains on real estate transactions in at least two of the taxable years, as well as the nonreporting of dividends, rentals, and interest. Adding up all the facts and the inferences to be drawn from them, we think the Commissioner has met his burden of proving fraud by clear and convincing evidence.

In reaching this conclusion we have not been influenced by the testimony of two witnesses to the effect that they paid so-called "protection" money to enable them to operate a house of prostitution free from police interference in Hawthorne. While the story told by these witnesses is some indication that "protection" payments were made in the City of Hawthorne, the record contains no convincing evidence tracing the payments testified about to petitioner.

No evidence was adduced with respect to the additions to tax pursuant to Sections 294(d)(1)(A) and 294(d)(2) and the Commissioner's determination in this respect is sustained.

Also, for the years 1944 and 1949 where the deficiencies were not based on net worth, the record supports the Commissioner and his determination is approved.

As indicated above, a rule 50 computation giving effect to the adjustments in net worth set out in this opinion may result in there being no deficiency in one or more of the taxable years. In that event the addition to tax for fraud will be eliminated as a matter of course.

Decisions will be entered under Rule 50.

Received May 1, 1956.

Served May 9, 1956.

Filed and entered May 9, 1956.

# The Tax Court of the United States Washington

Docket No. 49897

# MILFORD R. BAUMGARDNER,

Petitioner,

VS.

# COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion filed May 9, 1956, the parties having filed on August 28, 1956, an agreed computation of tax, now, therefore, it is

Ordered and Decided: That there are deficiencies in income tax and penalties for the taxable years 1945 and 1947 in the amounts as follows:

		Penalties	
Year	Tax Deficiency	Sec. 293(b)	Sec. 294(d)(2)
1945	\$856.96	\$428.48	<b>\$55.9</b> 8
1947	316.16	158.08	19.35

# /s/ NORMAN O. TIETJENS, Judge.

# [U. S. Tax Court Seal.]

Served August 30, 1956.

Entered August 30, 1956.

# The Tax Court of the United States Washington

Docket No. 49899

# MILFORD R. BAUMGARDNER and PEARL E. BAUMGARDNER,

Petitioners,

VS.

# COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion filed May 9, 1956, the parties having filed on August 28, 1956, an agreed computation of tax, now, therefore, it is

Ordered and Decided: That there is no deficiency in income tax and no penalty for the taxable year 1946; and that there are deficiencies in income tax and penalties for the taxable years 1942, 1944, 1948, 1949, 1950 and 1951 in the amounts as follows:

		Penalties-	
Year Tax Deficiency	Sec. 293(b)	Sec. 294(d)(2)	Sec. 294(d)(1)(A)
1942 \$ 647.54	\$ 323.77	\$	\$
1944 886.93	443.47	***********	
1948 2,954.28	1,477.14	215.86	323.78
1949 326.88	163.44	78.22	
1950 5,426.42	2,713.21	334.68	557.80
1951 1,434.62	717.31	104.62	174.36

/s/ NORMAN O. TIETJENS, Judge.

[U. S. Tax Court Seal.]

Served August 30, 1956.

Entered August 30, 1956.

# In the United States Court of Appeals for the Ninth Circuit

T. C. Docket Nos. 49897 and 49899

# MILFORD R. BAUMGARDNER and PEARL E. BAUMGARDNER,

Petitioners,

VS.

# COMMISSIONER OF INTERNAL REVENUE, Respondent.

#### PETITION FOR REVIEW

Taxpayers, the petitioners in this cause, by George Bouchard, their counsel, hereby file their petition for a review by the United States Court of Appeals for the Ninth Circuit of the decision by The Tax Court of the United States entered August 29, 1956 (T.C. Memo 1956-112), determining deficiencies in petitioners' Federal income taxes for the calendar years 1942, 1944, 1945, 1947, 1948, 1949, 1950 and 1951, and 50% fraud penalties for each year and penalties for failure to file declarations of estimated tax and for substantial understatement of estimated tax. Petitioners respectfully show:

I.

The petitioners are husband and wife, residing in the City of Hawthorne, California.

For the years 1942, 1943, 1944 and 1946 petitioner husband filed a separate return, reporting all income and claiming his wife as an exemption. For the years 1945 and 1947 petitioners filed separate returns on a community property basis. For the years 1948 to 1951, inclusive, petitioners filed joint returns. All returns were filed with the Collector of Internal Revenue for the Sixth District of California, which said collection district is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, wherein this review is sought pursuant to Section 7482 and Section 7483 of the Internal Revenue Code.

#### II.

# Nature of the Controversy

The controversy involves the proper determination of the petitioners' liability for Federal income taxes for the calendar years 1942, 1944, 1945, 1947, 1948, 1949, 1950 and 1951, the propriety of the respondent's use of the so-called "net worth method" in determining such liability, the accuracy of such determination, and the question of whether the petitioners filed their tax returns for the years involved with the intent to evade tax and are therefore liable for the 50% penalty for fraudulent underpayment of tax under Section 293 of the Internal Revenue Code of 1939, and whether petitioners are liable to penalties for failure to file declarations of estimated tax and for substantial understatement of estimated tax under the provisions of Sections 294(d)(1)(A) and 294(d)(2).

Using the "net worth method," the Commissioner of Internal Revenue determined that petitioner Mil-

ford R. Baumgardner received taxable income which he fraudulently failed to report in each of the years 1942, 1944, 1945 and 1947, and similarly determined that the petitioners Milford R. Baumgardner and Pearl E. Baumgardner received taxable income which they fraudulently failed to report in each of the years 1948, 1949, 1950 and 1951. The Commissioner of Internal Revenue also determined that petitioners were liable for penalties for failure to file declarations of estimated tax and for substantial understatement of estimated tax. Except as to the amounts of income determined by the Commissioner of Internal Revenue to have been received by petitioners in each of the taxable years, the Tax Court sustained the determinations of the Commissioner and redetermined deficiencies, fraud penalties and penalties for failure to file declarations of estimated tax and for substantial understatement of estimated tax for each of the years in question.

### III.

The said taxpayers, being aggrieved by the findings of fact and conclusions of law contained in said findings and opinion of the Court, and by its decision entered pursuant thereto, desire to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

/s/ GEORGE BOUCHARD, Counsel for Petitioners.

Received and filed November 19, 1956, T.C.U.S.

# [Title of Court of Appeals and Cause.]

T.C. Docket Nos. 49897 and 49899

#### STATEMENT OF POINTS

Now comes the taxpayers, petitioners herein, by their attorney, George Bouchard, and hereby assert the following errors, which they intend to urge on review by the United States Court of Appeals for the Ninth Circuit of the decisions of the Tax Court of the United States in the above causes on May 9, 1956:

- 1. The Tax Court erred in failing to apply the legal requirements in the use of the "net worth method" in computing taxable income.
- 2. The Tax Court erred in holding that the respondent had satisfied his burden of proving fraud by the "net worth method."
- 3. The Tax Court erred in holding that petitioners were liable for penalties for failing to file proper estimates of tax liability.
- 4. The Tax Court erred in failing to find that the assessment and collection of additional taxes for all years prior to the year 1950 were barred by the statute of limitations.

/s/ GEORGE BOUCHARD, Counsel for Petitioners.

Filed November 19, 1956, T.C.U.S.

The Tax Court of the United States Docket Nos. 49897, 49898, and 49899

MILFORD R. BAUMGARDNER, PEARL E. BAUMGARDNER, MILFORD R. BAUMGARDNER, GARDNER & PEARL E. BAUMGARDNER,

Petitioners,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

#### PROCEEDINGS

November 29, 1955—10:40 A.M.

Before: Honorable Norman O. Tietjens, Judge.

## Appearances:

## GEORGE BOUCHARD,

Appearing for and on Behalf of Petitioners.

# THOMAS J. SULLIVAN,

Office of Commissioner of Internal Revenue,

Appearing for and on Behalf of the Respondent.

The Clerk: The Court is in session.

We have, if your Honor please, Docket Nos. 49897, 49898 and 49899, Milford R. Baumgardner,

Pearl E. Baumgardner, and Milford R. Baumgardner & Pearl E. Baumgardner.

Please state your appearances for the record, gentlemen.

Mr. Bouchard: George Bouchard for the Petitioners.

Mr. Sullivan: Thomas J. Sullivan, for the Respondents.

Mr. Bouchard: I am short of a client.

The Court: Well, we will wait for him if you want to.

Mr. Bouchard: Oh, I don't think that is essential.

# Opening Statement on Behalf of the Petitioners

By Mr. Bouchard.

The only opening statement, if the Court please, that I have to make is that those are petitions involving years 1942 through 1951, excepting the year 1943, no additional tax has been charged for that year.

All of the years prior to 1949 are barred by limitations unless the Government sustains an issue of fraud which it has ascertained, excepting perhaps the year 1949 and maybe 1948. These may not be opened, unless the Government—that is barred, unless the Government shows there has been an omission of more than 25%. [3\*]

By agreement with Mr. Sullivan, the Govern-

<sup>\*</sup>Page numbering appearing at top of page of original Reporter's Transcript of Record.

ment is going to proceed with our tax case to sustain the issue of fraud in the early years that are clearly barred and will continue along with their presentation. I think that will shorten the trial at the outset.

I want to move that all witnesses who are not testifying, except the parties involved, be excluded from the Court room.

The Court: Any objection to that, Mr. Sullivan? Mr. Sullivan: No objection.

The Court: Will the witnesses who have been called and who are to testify, please leave the room? I think you can find some place to stay back there.

The Clerk: Will you come this way, ladies and gentlemen?

Mr. Sullivan: I would like to have the agent here at the trial, who will testify.

The Court: Is there any objection to that, Mr. Bouchard?

Mr. Bouchard: No, there is no objection to that, your Honor.

# Opening Statement on Behalf of the Respondent

By Mr. Sullivan.

May it please the Court, Mr. Bouchard has stated the years in question and he is right that prior [4] to 1950 the Government either has to prove that a twenty-five per cent deficiency exists for the statute to be opened for the years 1948 to 1949 and for the earlier years. The Respondent's case is a net worth case and the deficiencies and statutory notice were set upon a net worth basis, with the exception of 1944 and 1949, where the deficiencies were set up for specific items of unreported income.

We have entered into extensive stipulations of fact and will present them at the conclusion of my opening statement, the stipulations of fact and seventeen exhibits attached to them.

Informally, Mr. Bouchard and myself agreed to a further stipulation of fact as to the records of the bonding company, that Mr. Bouchard informed me this morning that he was unable now, in light of information that he had learned just last night, to stipulate to that fact. Therefore, we are attempting to have those records at the bonding company checked by the treasurer of the bonding company and we are informed that they are in the archives of the company and he may not be able to get here in time while the Court is sitting to testify to this, which, in that event, at the end of the trial, we would request your Honor to keep this case open so that we may have a deposition taken from the bonding company.

Mr. Bouchard: I would suggest, with respect to that motion, Mr. Sullivan, that the Court need not pass on it [5] until the conclusion of the trial. My information on that might not be accurate or reliable.

The Court: I will reserve any ruling on that motion then with regard to the deposition.

Mr. Sullivan: Yes. sir.

As to the net worth statement which is Exhibit 1-A to the stipulation of fact, there are three items which are in dispute, the Beacon Cafe, the other the Embassy Club and third, the case on hand. We will introduce evidence as to those three items.

As to the schedule of living expenses which is Exhibit 2-B, there are eight items in dispute and the special agent will testify as to those eight items.

In addition to the evidence of net worth, the Respondent will also introduce evidence in his opinion, which will show fraud. We expect to show that the Petitioners had little or no cash on hand at the beginning of the net worth period, the starting point. We expect to introduce evidence that will indicate a course of conduct in the earlier years which is inconsistent with the large cash hoard.

We further expect to introduce evidence showing the concealment of assets, the omission of income from the return, and omission of rental income, dividend income, interest income and income from a bar and restaurant, a poker club. [6]

We will also show the unreporting of capital gain and concealment of income items from the accountant preparing the returns.

At this time, your Honor, I would like to render a stipulation of facts with the seventeen exhibits attached to it.

The Court: The stipulation will be received to go with the exhibits.

Mr. Sullivan: I would like to now call Mr. Pool. The Clerk: P-o-o-l?

Mr. Sullivan: Yes, sir.

The Clerk: Tell us your name, please?

Mr. Pool: Cal. I. Pool.

Whereupon,

#### CAL. I. POOL

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

### By Mr. Sullivan:

- Q. Mr. Pool, where do you live?
- A. 6760 Third Avenue, Los Angeles.
- Q. What is your business or occupation?
- A. C.P.A.
- Q. And in the course of your business, did you have [7] as a client, a partnership known as the Embassy Club at Gardena, California?

A. Yes.

Mr. Sullivan: Will you mark this as Respondent's Exhibit next in order for identification?

The Clerk: Exhibit R for identification.

(The document above referred to was marked Respondent's Exhibit R for identification.)

The Clerk: If the Examiner please, attached to the stipulation are Exhibits 1-A to 17-Q inclusive.

(The documents above referred to were marked Respondent's Exhibits Nos. 1-A to 17-Q inclusive, for identification and received in evidence.)

The Clerk: And we are now starting with Exhibit R for Respondent.

- Q. (By Mr. Sullivan): I show you a document which purports to be a copy letter written by you and I ask you if you can identify that?
- A. This is evidently a copy of a letter I wrote to Mr. Baumgardner showing his share of the income and the donations shown on the tax return of the Embassy Club for the period ending May 31, 1951, and the period ending December 31, 1951.
- Q. On that letter there is marked "Donations"; could you tell us what the "donations" referred [8] to?
- A. Well, that is the partnership share of the donations made by the Embassy Club.
- Q. And there are also appearing figures under the title "income"; could you tell us what that refers to?
- A. That refers to the Baumgardner partnership, share of the income.
- Q. Now do the figures on there represent the figures appearing in the books of the Embassy Club?
- A. That is right. Well, no, that would not be the amount on the books of the Embassy Club because there was a variation between the income on the Club books and the income on the tax return due to preferential salaries. These are the accounts—the amounts shown as the partner's distributable shares of the income.
  - Q. What kind of a Club is the Embassy Club?

- A. It is a card room.
- Q. What do you mean by a "card room"?
- A. Well, it is a legal card room in the City of Gardena.

The Court: Will you speak a little more loudly, please, Mr. Pool?

Mr. Sullivan: At this time, your Honor, I would like to offer this letter in evidence.

The Court: Is there any objection, Mr. Bouchard?

Mr. Bouchard: Yes, I object to it as being [9] immaterial.

The Court: For what purpose, Mr. Pool, was that furnished to Mr. Baumgardner?

The Witness: Well, instead of sending each partner a copy of the tax return, I sent each partner a letter showing the figures that he should use on his personal return.

The Court: And you were employed for that purpose by Mr. Baumgardner?

The Witness: No, I was employed by the Embassy Club.

The Court: The objection is overruled.

The Clerk: Exhibit R.

(The document heretofore marked Respondent's Exhibit R was received in evidence.)

Mr. Sullivan: You may cross-examine, Mr. Bouchard.

The Court: Is that all? Mr. Sullivan: Yes, sir.

#### Cross-Examination

## By Mr. Bouchard:

- Q. Mr. Pool, how long were you accountant for the Embassy Club?
  - A. Oh, possibly three or four years.
  - Q. Three or four years? A. Yes.
  - Q. Beginning when? [10]
  - A. Well, I could not say offhand, probably 1949.
- Q. Now, you say that was a card room in Gardena? A. Yes.
- Q. Card rooms in Gardena are legal, are they not?

  A. Yes.
- Q. I notice in this letter, Exhibit R, you show the income, the distributive income of Mr. Baumgardner, as a partner and the figures 5-31-51—what does that 5-31-51 mean?
- A. That is the period five months ending May 31, 1951.
- Q. That is the period from January 1 of 1951 through May 31 of 1951; is that right?
  - A. Yes.
- Q. And then do I take it that the date 12-31-51 in which you show income of \$1,116.54 is what was to be determined as Mr. Baumgardner's distributive share for the partnership for the period June 1, '51, to December 31, 1951? A. Right.
- Q. Why was the rate for that partnership broken down then, if it was—strike that out, please.

Did you file a return for the partners for the period January 1, 1951, to May 31, 1951?

- A. I did.
- Q. For the five months' period?
- A. Yes. [11]
- Q. And then did you file a separate partner return for the period from June 1, 1951, to December 31, 1951? A. Yes, I did.
  - Q. Why did you do that?
- A. We had a different partner who came in and started the partnership.
- Q. You mean that one person who was a partner from the first period sold his interest to someone else and this someone else became a partner for the second period?

  A. That is right.
- Q. And did the partnership in the second period continue with the same business that had been operating prior to June 1? A. Yes, it did.
- Q. The only change that was made was that you had one different partner; is that right?
  - A. That is right.
- Q. Now, was that a general partnership or a limited partnership?
- A. It was a general partnership as far as I know.
- Q. And all of the partners, so far as you know, were general partners; is that right?
  - A. That is right.
- Q. In connection with your working as a CPA have you had occasion to prepare tax returns and

### Cross-Examination

## By Mr. Bouchard:

- Q. Mr. Pool, how long were you accountant for the Embassy Club?
  - A. Oh, possibly three or four years.
  - Q. Three or four years? A. Yes.
  - Q. Beginning when? [10]
  - A. Well, I could not say offhand, probably 1949.
- Q. Now, you say that was a card room in Gardena? A. Yes.
- Q. Card rooms in Gardena are legal, are they not?

  A. Yes.
- Q. I notice in this letter, Exhibit R, you show the income, the distributive income of Mr. Baumgardner, as a partner and the figures 5-31-51—what does that 5-31-51 mean?
- A. That is the period five months ending May 31, 1951.
- Q. That is the period from January 1 of 1951 through May 31 of 1951; is that right?
  - A. Yes.
- Q. And then do I take it that the date 12-31-51 in which you show income of \$1,116.54 is what was to be determined as Mr. Baumgardner's distributive share for the partnership for the period June 1, '51, to December 31, 1951?

  A. Right.
- Q. Why was the rate for that partnership broken down then, if it was—strike that out, please.

Did you file a return for the partners for the period January 1, 1951, to May 31, 1951?

- A. I did.
- Q. For the five months' period?
- A. Yes. [11]
- Q. And then did you file a separate partner return for the period from June 1, 1951, to December 31, 1951? A. Yes, I did.
  - Q. Why did you do that?
- A. We had a different partner who came in and started the partnership.
- Q. You mean that one person who was a partner from the first period sold his interest to someone else and this someone else became a partner for the second period?

  A. That is right.
- Q. And did the partnership in the second period continue with the same business that had been operating prior to June 1? A. Yes, it did.
- Q. The only change that was made was that you had one different partner; is that right?
  - A. That is right.
- Q. Now, was that a general partnership or a limited partnership?
- A. It was a general partnership as far as I know.
- Q. And all of the partners, so far as you know, were general partners; is that right?
  - A. That is right.
- Q. In connection with your working as a CPA have you had occasion to prepare tax returns and

familiarize yourself [12] with the statute relating to partnership returns and the regulations thereon?

- A. Yes.
- Q. Don't you know as a fact that the decisions of the Tax Court, the rulings of the Commissioner of Internal Revenue provide that the mere fact that you have a change, addition of a partner to a partnership, who continues in the same business, doesn't entitle you to file returns for long or short periods?

Mr. Sullivan: I object to the question as calling for a conclusion of the witness.

The Court: Well, it is exploring his knowledge of the rules.

The Witness: At that time, I had some doubt as to whether, when a partner dropped out of a partnership, whether or not it dissolved the partnership and created a new partnership.

- Q. (By Mr. Bouchard): Then when you did this, you were doubtful if you were doing the right thing or not; is that so?
- A. Yes, but I knew it could not hurt anything by filing two partnership returns instead of one.
- Q. Did you know that a partnership has to file a return on either a calendar or a fiscal year basis?
  - A. That is right.
- Q. Now, at the end of December, 1951, did you have any [13] change in the partnership—were there any new partners admitted?
- A. I don't remember whether there was. There were changes quite often in that period, but I

(Testimony of Cal. I. Pool.) don't know if there was a change at December 31 or not.

- Q. When you say you had a little doubt whether you were doing it the right way in filing two short returns, isn't the thing that you had some doubt about as to whether or not you were entitled to file a partnership return for the period June 1, 1951, to December 31, 1951, or whether you should file the return for the period June 1, 1951, for the complete fiscal year ending May 31, 1952; wasn't that the problem that you had? A. No.
  - Q. What was your problem?

 $\Lambda$ . As to whether it was necessary to file a return at May 31st or not.

- Q. If, having filed a return for the short period, January 1 to May 31, if that was correct and then if, under the law or the regulations, in filing the next return for that partnership, you were required to file it for a full fiscal year, namely, June 1, 1951, to May 31, 1952, then it would have made a difference, would it not?

  A. I lost you in there.
- Q. You mean you did not understand my [14] question? A. No.
- Q. If you were required, under the law, for the second period, to file it for a complete fiscal year, namely, June 1, 1951, to May 31, 1952, then whatever partnership income was subject to tax would have been attached to the parties in the year 1952 and not in the year 1951, wouldn't that be true, Mr. Pool?

  A. That would be true.

Mr. Bouchard: That is all.

The Court: Mr. Sullivan, do you have anything further?

Mr. Sullivan: Yes.

Mr. Bouchard: May I ask another question? I am sorry, your Honor.

The Court: All right.

- Q. (By Mr. Bouchard): Did you make out the partnership returns for the year 1952 also, Mr. Pool? A. I did.
- Q. Are you still an employee of the Embassy Club? A. No.
  - Q. When did you terminate your relationship?
- A. When the Embassy Club was sold, I think in 1953.
- Q. Now, you did not keep the books of the Embassy Club, did you? [15]
  - A. I kept part of them.
- Q. They have a regular bookkeeper that was employed, and you, as a CPA, made the audits and checked?
- A. No, they had a cashier and I came in and did most of the work, the general records.
- Q. You actually, yourself, did the work of keeping the books of the Club? A. Yes.
  - Q. How often did you do that?
- A. I was down there every week doing some of the work and gave them a statement whenever one was wanted.

Mr. Bouchard: That is all.

#### Redirect Examination

## By Mr. Sullivan:

- Q. Mr. Pool, was that partnership on a calendar year or a fiscal year, perhaps?
- A. The partnership which was originally—it was on a calendar year basis.
  - Q. I show you Exhibits 13-N and 14-M-

Mr. Bouchard: Have I got them?

Mr. Sullivan: No, they are exhibits which were attached to the stipulation.

- Q. (By Mr. Sullivan): They are photostatic copies of the partnership returns for the Embassy Club, and I ask you if you can identify [16] them?
- A. One of the partnership returns for the Embassy Club for the period January 31, 1951, up to May 31, 1951.

Mr. Bouchard: I submit that they are in evidence as part of the stipulation. They do not need to be identified. They are in the record and they speak for themselves.

Q. (By Mr. Sullivan): Mr. Pool, if, in fact, the partnership should not have been terminated on May 31, 1951, would not the information appearing on both returns covering the year be proper on one return?

A. It would.

Mr. Sullivan: Thank you, that is all. Oh, one more question.

Q. (By Mr. Sullivan): Was the partnership on a calendar year basis in 1951 for the whole year?

A. In 1950 it was on a calendar year basis and prior and subsequent to that. Then it was on a calendar basis. Just this one year, I put it into two returns.

Mr. Sullivan: Thank you.

#### Recross-Examination

By Mr. Bouchard:

Q. Mr. Pool, were there any different partners that were members of this partnership for the period January 1, [17] 1951, to May 31, 1951, than there were for the period ending December 31, 1950?

(No response.)

- Q. Did any new partners come in?
- A. They must have.
- Q. Why do you say that?
- A. Oh, different partners in a short period than there were in 1950. I could not say offhand on that. I would say no, there wasn't, but it could be. They changed partners quite often.
- Q. You think the partners for the period January 1, 1951, to May 31, 1951, were the same partners that had been members of the partnership for the year 1950?

  A. I think so.

Mr. Bouchard: All right, that is all.

Mr. Sullivan: That is all.

The Court: You are excused.

(Witness excused.)

Mr. Sullivan: I will call Mr. Ludolph, please.

The Clerk: Will you tell us your name, please, Mr. Witness?

Mr. Ludolph: Richard P. Ludolph. [18]

Whereupon,

#### RICHARD P. LUDOLPH

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

## By Mr. Sullivan:

- Q. Mr. Ludolph, where do you live?
- A. 225 East 126th Street, Hawthorne.
- Q. What is your business or occupation?
- A. The same address.
- Q. What is your business?
- A. I am a public accountant.
- Q. As a public accountant, have you in prior years had occasion to prepare tax returns for others?

  A. Yes.
- Q. Are you acquainted with the Petitioner in this case, Mr. Baumgardner? A. Yes, I am.
- Q. How long have you known Mr. Baumgardner? A. Oh, since about 1939 or 1940.
- Q. Have you ever prepared any tax returns for Mr. Baumgardner? A. Yes, I did.
- Q. Could you tell us, in preparing Mr. Baumgardner's [19] returns, to the best of your recollection, exactly what transpired, that is, what records

he brought to you and what records you kept for him and so forth?

- A. Well, he had houses for rent and I would usually make up the schedule for him to put down his income and expenses.
- Q. What years did you make his return for or prepared his return for?
- A. About 1941 or 1943 or through 1951 or 1952, I think.
- Q. I show you Exhibits 16 and 17 and ask you if you prepared the original of those documents—they purport to be carbon copies?
  - A. Yes, sir, I did.
- Q. Referring now to Exhibit 16, in schedule B there is listed two houses and frame building and various amounts of income depreciation and so forth—where did you get these amounts?
- A. They were furnished to me by Mr. Baumgardner.
- Q. Did you keep any independent records of those amounts?
  - A. No, not before that time, no.
- Q. Referring now to Exhibit 17, schedule D, there appears two houses, a house at 158 and a house at 162 and long-term capital gain figured on it—did you keep any records of those houses—where did you get these figures as to the [20] purchase price and sale price?
- A. They were furnished to me by Mr. Baumgardner.

Mr. Sullivan: Thank you.

Mr. Bouchard: May I see the exhibits?

Mr. Sullivan: Yes.

- Q. (By Mr. Sullivan): Did Mr. Baumgardner give you any written documents when you came in to prepare the account or did he furnish you with the figures orally?
- A. Sometimes I made a schedule for him to make out and he brought it back to me.
- Q. I show you Exhibit No. 5-E and I ask you if you prepared the original of this return?
  - A. Yes, sir, I did.
- Q. I show you Exhibit 6-F and I ask you if you prepared the original of that return?
  - Λ. Yes, sir, I did.
- Q. I show you Exhibit 7-G and I ask you if you prepared the original of that return?
  - A. Yes, sir.
- Q. On the Exhibit 6-F there, under income, there is \$2,000.00 from commissions—where did you get that figure?
- A. After I had finished the other blocks on the return, I asked Mr. Baumgardner if he had any other income and he said "Yes," and that it amounted to about \$2,000.00. [21]
  - Q. Did he tell you what that income was?
- A. No. I asked him, "Will I put that down as commissions?" And he said "yes."
  - Q. Did he indicate what it consisted of?
- A. No, he did not, just other income. I used the word "commissions."
  - Q. Did he show you any schedules as to where

the commission had come from? A. No, sir.

- Q. Did he tell you what it consisted of?
- A. No, he did not.
- Q. I now show you Exhibit 8-H and I ask you if you prepared the original of that return?
  - A. Yes, sir, I did.
- Q. And that return is listed miscellaneous commissions \$3,000.00—do you know where you got that figure from?
- A. That would be the same thing. I asked him how much other income he had and he said "\$3,000.00."
- Q. Did he present you with any document to support this \$3,000.00? A. No, sir.
- Q. Did he tell you anything that was in that \$3,000.00 figure? A. No, sir.
  - Q. What it was composed of? [22]
  - A. No, sir.
- Q. I show you Exhibit 9-I and I ask you if you prepared the original of that?
  - A. Yes, sir, I did.
- Q. It shows miscellaneous commissions \$6,000.00. As to that, would your answer be the same as it was to the \$3,000.00 and the \$2,000.00?
  - A. Yes, sir, it would.
- Q. I show you Exhibit 10-J and I ask you if the original of that document was prepared by you?
  - A. Yes, sir.
- Q. In Schedule F, page 2 of this, there is a—oh, strike that.

On Exhibit 10-J there appears no commissions—

(Testimony of Richard P. Ludolph.) did you ask Mr. Baumgardner about commissions that year or other income?

- A. Yes, I believe I did ask him and he said "No." He said he had had a loss. He had spent all his money trying to get his job back.
- Q. But that loss wasn't included in that return, was it? A. No.
- Q. I show you Exhibit 11-K and ask you if you prepared the original of that?
  - A. Yes, sir, I did. [23]
- Q. It is noted here that the only income shown is from the City of Hawthorne and from a Milady's Dress Shop—did you ask Mr. Baumgardner if he had any other income for that year?

Mr. Bouchard: What year is that, Mr. Sullivan? Mr. Sullivan: 1951.

The Witness: Yes, I did, and I believe his answer was the same for 1951.

- Q. (By Mr. Sullivan): Did you ask him specifically whether he had any interest income, any dividend income?
- A. No, I did not. I asked him each year how much other income he had.
- Q. Did he ever present to you any documents showing any interest income or dividend income?
  - A. No, he did not.
- Q. Did he ever tell you that he had any interest income or dividend income in any of the years that you prepared his returns?
  - A. No, he did not as such, no.
  - Q. Did he ever present you with any records?

- A. No, sir.
- Q. Did he ever present you with any records as to the homes that appeared on some of the returns as being built? [24]
- A. In the last few years, when he had a number of houses, I gave him the schedule to fill out.
  - Q. But before?
- A. Before that, there were no documents, I don't believe.
- Q. You mean in 1949 and 1950 by "the last few years"? A. Yes.
- Q. Approximately how much time did you spend each year in the preparation of Mr. Baumgardner's income tax return?
- A. Not very long. It doesn't take me very long to fill in a return.
  - Q. Half an hour or four hours or eight hours?
  - A. Approximately half an hour.
- Q. What did Mr. Baumgardner pay you in each of these years?
- A. I never did make a charge for making out the returns. I never charge for making out the returns.
- Q. Did Mr. Baumgardner ever tell you that he had income from the Embassy Club?
  - A. No, sir, he did not.
- Q. Did he ever tell you that he had any income or loss from the Beacon Cafe?
  - A. No, sir, he did not as such.
  - Q. Do you know whether Mr. Baumgardner

(Testimony of Richard P. Ludolph.) owned any Trust Deeds and received interest income from them? [25]

- A. No, sir, at that time, I didn't know.
- Q. Did he tell you that he did at any time?
- A. No, he did not say anything about it, but just gave me the amount of the other income. That was all.
- Q. In each year, did you ask Mr. Baumgardner whether he had earned additional income outside of his salary?
- A. When I finished the work, I asked him what other income he had and he would give me the other figure.
- Q. Did you ask him at any time to keep records so that you could have access to definite amounts?
- A. No, I don't believe I did. An audit job is quite different from an income tax job.
  - Q. Did you know Mr. Baumgardner personally?
- A. Oh, well, yes, like you know anybody in a small town.
- Q. Did you know outside of what you learned from preparing his returns, whether he had any Trust Deeds or whether he loaned money or owned any stocks?

  A. No, sir, I did not.

Mr. Sullivan: Will you mark this Respondent's Exhibit next in order?

The Clerk: Respondent's Exhibit S.

(The document above referred to was marked Respondent's Exhibit S for identification.) [26]

- Q. (By Mr. Sullivan): I show you Respondent's Exhibit S for identification and ask you if you can identify that document?
  - A. Yes, sir, I believe I prepared it.
  - Q. And what is that document?
- A. It is the California State individual's income tax return.
- Q. Did you also prepare his Federal income tax return for that year? A. Yes, sir, I did.
- Q. Would the income, in the Federal or the State return be the same as you have shown on the Federal return?

Mr. Bouchard: Just a minute. That is objected to because the Federal return is in evidence.

Mr. Sullivan: The Federal return is not in evidence for that year.

Mr. Bouchard: The year 1945 is not in evidence?

Mr. Sullivan: No, sir.

The Court: Do you withdraw your objection?

Mr. Bouchard: Yes, sir, I thought it was.

The Witness: Yes, sir, that would be practically the same.

Mr. Sullivan: I offer Exhibit S marked for identification in evidence.

Mr. Bouchard: I have no objection. [27]

The Court: Admitted.

(The document marked Respondent's Exhibit S was received in evidence.)

Mr. Sullivan: That is all, your Honor.

The Court: Mr. Bouchard.

Mr. Bouchard: Yes.

#### Cross-Examination

#### By Mr. Bouchard:

- Q. Mr. Ludolph, have you ever had an experience in rental experience? A. Yes, sir.
  - Q. When?
- A. 1921 and 1922 I was investigating officer of the income tax unit, investigating auditor.
  - Q. In Los Angeles? A. Yes.
  - Q. How long have you lived in Hawthorne?
  - A. Since about 1940.
- Q. Do you—strike that. Did you know that Mr. Baumgardner was chief of police?
  - A. Yes, sir.
  - Q. Do you know during what years?
  - A. Oh, since 1940, I think.
  - Q. Up until when? A. About 1950. [28]
- Q. Did you make out any of his tax returns for years prior to 1940 or 1941, the years that you have identified here?

  A. I don't think so.
- Q. Had you known Mr. Baumgardner for some time prior to the time you did work for him?
  - A. Well, I knew who he was, yes.
- Q. As I understand you made out the tax returns for the members of the police department and the fire department and any other employees out there, that you did that work for?
- A. I think I did it for some of them in the water department, too.
- Q. I take it from your testimony that when you made out these returns for Mr. Baumgardner, he

gave you his salary from the City of Hawthorne and then you asked him if he had any other income in addition to that salary?

A. Yes, sir, I did.

- Q. And he gave you the figures that are on the tax returns, the \$2,000.00, the \$3,000.00 and the \$6,000.00 figures and whatever else may be there?
  - A. Yes, sir, he did.
- Q. And the point of your question to him was, I take it, to be sure that as far as you were concerned and giving him an opportunity, so far as he was concerned, to get on his tax [29] return all of the income he had?

A. Yes, sir, that was his express desire.

Mr. Bouchard: I think that is all, your Honor. Mr. Sullivan: That is all, your Honor. Thank you.

The Court: Thank you.

(Witness excused.)

Mr. Sullivan: Mr. Walker, please.

The Clerk: Will you tell us your name, please?

Mr. Walker: Clyde R. Walker.

Whereupon,

#### CLYDE R. WALKER

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

#### **Direct Examination**

By Mr. Sullivan:

Q. Mr. Walker, where do you live?

A. In Hawthorne.

- Q. What is your business or occupation?
- A. Newspaper distributor.
- Q. Directing your attention to the year 1945, what was your business or occupation at that time?
  - A. Newspaper distributor.
  - Q. Did you have any other interest?
  - A. I worked at the Beacon Cafe part time. [30]
- Q. Who owned the Beacon Cafe in 1945, if you know?
- A. A fellow by the name of Guelff and Clyde Carnes.

Mr. Bouchard: How do you spell that first name?

The Witness: G-u-e-l-f-f, I think.

- Q. (By Mr. Sullivan): Do you know if there was a change of partnership in the Beacon Cafe in 1945?
- A. There was a change of ownership. My uncle bought out the half interest of Clyde Carnes and Mr. Guelff transferred his half interest to his wife.
- Q. How long did your uncle—is that Charles Walker? A. Yes, sir.
- Q. How long did your uncle and Janet Guelff operate in the Beacon Cafe?
- A. I cannot give you the exact length of time. They operated it until she died. It wasn't too long a time after that.
- Q. And do you know what happened to the ownership of the Beacon Cafe after Mrs. Guelff died?
  - A. Actually I was running it for my uncle. It

was in his interest. He had separated from his wife and at the time the purchase was made I actually put the money up for him, so I was actually managing the cafe until about two or three months after Mrs. Guelff died and at that time it was changed over and I took over my uncle's portion of the [31] cafe.

- Q. In your name? A. Yes, sir.
- Q. What happened to Mrs. Guelff's half interest, if you know?

  A. It was purchased.
- Q. Will you tell the Court what you know about the purchase of Mrs. Guelff's half interest?
- A. Well, around July, to the best of my memory, we had somebody who wanted to buy it and due to the fact that they wanted the whole thing, we had to do something about it and it was tied up in the Court, so in talking to Mr. Baumgardner he mentioned that he would buy the other half, so I petitioned the Court to sell it—the other half interest—at that time, and it was purchased in my name from the Court.
  - Q. Who put up the money?
  - A. As far as I know, Mr. Baumgardner.
- Q. Then as I understand your testimony, it was actually in your name, the whole interest was in your name?

  A. Yes, sir.
- Q. Did you sign any document that stated that you were holding the other half interest as nominee for Mr. Baumgardner? A. Yes, sir.
  - Q. Where is that document now?

- A. The only time I ever saw it was when it was at the [32] attorney's office with Mrs. Deener.
- Q. If you can remember, can you tell us substantially what that document stated?

Mr. Bouchard: That is objected to as not competent.

The Court: Well, the document cannot be produced, I take it. You don't know where the document is, do you?

The Witness: No.

The Court: Have you made any effort to get it?

(No response.)

Mr. Sullivan: Can I lay a further foundation, your Honor?

The Court: Yes.

- Q. (By Mr. Sullivan): At whose insistence did you prepare this document?
  - A. Mr. Baumgardner's.
- Q. Do you know if Mrs. Deener still has this document?

  A. I don't know, no, sir.
- Q. Have you made any effort to get this document? A. No.
- Q. Did Mr. Baumgardner get a copy of this document?
- A. I could not tell you. I don't know whether she gave him one or not. She did not give me one.
- Q. Did you sign any papers in the sale of Mrs. Guelff's half interest that was purchased in your name?

- A. You mean—I don't quite understand what you mean. [33]
  - Q. Well---
- Λ. Do you mean did I sign any papers buying her half interest?
  - Q. Well, the escrow papers and so on?
- A. The escrow papers and all from the Court, yes, sir.
  - Q. Who prepared the escrow?
  - A. Mrs. Deener.
- Q. After the sale of Mrs. Guelff's half interest was there any agreement between you and Mr. Baumgardner as to the profits or losses of the Beacon Cafe?

  A. It would be fifty-fifty.
  - Q. Was that a written or oral agreement?
  - A. Oral.
- Q. Who kept the books of the Beacon Cafe after July, 1946?
- A. They were kept up until, I believe, approximately January, by the bookkeeper that I had at that time, a Mr. Glass, and after around January they were kept by Mrs. Strawn.
  - Q. Who hired Mrs. Strawn?
- A. That would be pretty hard to say. Mr. Baumgardner said he would rather that she would keep the books, that he wasn't satisfied with the bookkeeper I had and he would rather she would keep the books, so whether I went over and got her to keep them or whether she came to me or whether he went over, I cannot remember. [34]
  - Q. Directing your attention to October, 1947,

did anything transpire at this time regarding your interest in the Beacon Cafe?

- A. That was the time that I sold my interest in the cafe. The dates have got me all wrong.
  - Q. Did you sell your interest?
  - A. Yes, I did.
  - Q. Who did you sell it to?
  - A. I sold it to James Staten.

Mr. Bouchard: When was that? I didn't get the year.

Mr. Sullivan: 1947. He wasn't sure about the month.

Mr. Bouchard: All right.

- Q. (By Mr. Sullivan): Did Mr. Staten purchase your half interest? A. Yes.
- Q. Did you know if he was purchasing that for himself or was he a nominee for someone else?
  - A. I don't know that.
- Q. After you sold your half interest to Mr. Staten, who then owned the Beacon Cafe, if you know?
- A. As far as I know, Mr. Staten and Mr. Baumgardner, although it was in Mr. Staten's name. What happened to the other half, I don't know. [35]
- Q. Do you know how much was paid into escrow as the purchase price? A. At which time?
- Q. At the time the half interest was bought from Mrs. Guelff's estate.
  - A. \$12,500.00 and half of the inventory.

Mr. Sullivan: That is all. You may cross-examine, Mr. Bouchard.

#### **Cross-Examination**

By Mr. Bouchard:

- Q. Mr. Walker, you testified that you petitioned the Probate Court for Mrs. Guelff's interest which was sold to you, is that correct? A. Yes.
  - Q. And what was the sale price of that?
  - A. \$12,500.00 and half of the inventory.
  - Q. That is what you have just told us?
  - A. Yes.
- Q. I think you said so far as you knew, Mr. Baumgardner put up the money. Mr. Baumgardner did not pay any money to you, did he?
  - A. The money was paid into escrow.
  - Q. It wasn't paid to you? A. No, sir.
- Q. Now, when you sold your half interest in 1947 to Mr. [36] Staten, I think you testified that you did not know whether he was buying it for himself or for someone else; is that correct?
- A. No, sir, I presume he was buying it for himself.
- Q. But if he wasn't you did not know; is that right?

  A. Right, sir.
- Q. Now, you don't know if Mr. Baumgardner did put up any of this purchase money to buy the Guelff interest?

  A. No, sir.
- Q. You don't know whether he was representing anybody else or not, do you?
  - A. Whether he was representing anybody else
  - Q. Yes. A. No, sir, I do not.

- Q. You have had no connection, I take it, with the Beacon Cafe since you sold out in 1947?
  - A. No, sir.
- Q. How much did you sell out your half interest to Mr. Staten for?
- A. For \$7,500.00 I sold out, plus half the inventory.
  - Q. Plus half the inventory? A. Yes.
- Q. Had the business between the time that the Guelff interest, some time in July of 1946, was sold and your sale to Mr. Staten in January of 1947, had business gotten worse, Mr. [37] Walker?
  - A. Yes, sir, it had.
  - Q. As a matter of fact, it was never a very profitable undertaking, was it?
    - A. The bottom dropped out of it right after that.
- Q. Now, you testified I think that you had an oral agreement with Mr. Baumgardner that you and he would split the profits, if any, is that right?
  - A. Yes, sir.
  - Q. But it was never reduced to writing?
- A. I would not say that it was never. I would have to qualify my statement to this effect, that I don't remember everything that was in the papers that were drawn up in Miss Deener's office, but there was definitely an oral agreement that he had half of the Beacon and that half of the profits would be his.
  - Q. Were there any profits between that period of July, 1946, and January, 1947, when you sold out? A. No, sir.

Mr. Bouchard: That is all, Mr. Walker, thank you.

Mr. Sullivan: That is all, thank you, Mr. Walker.

The Court: You are excused.

(Witness excused.)

The Court: What time do you gentlemen want to stop for lunch—12:30? [38]

Mr. Bouchard: It is OK with me.

Mr. Sullivan: Could we call one more witness? He has to get away this afternoon.

The Court: What is his name?

Mr. Sullivan: Staten.

The Court: All right, we will run until 12:30 and then recess until 2:00 oclock.

Mr. Sullivan: Thank you.

The Clerk: Will you tell us your name, Mr. Witness, please?

Mr. Staten: James L. Staten.

Whereupon,

#### JAMES L. STATEN

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

#### **Direct Examination**

By Mr. Sullivan:

Q. Mr. Staten, where do you live?

A. 1414 West El Segundo, Gardena.

- Q. What is your business or occupation?
- A. I own a trailer park.
- Q. Directing your attention to the year 1946, what was your business or occupation at that time?
  - A. What year was that?
  - Q. 1946. [39]
- A. I do not believe I was doing anything in the year 1946.
- Q. Directing your attention to the Beacon Cafe, were you connected with it in any way during the year 1946?
- A. Now, I may have been. I was thinking it was 1947. Probably it was 1946, if your records so show.
- Q. And in what way were you connected with the Beacon Cafe?
- A. Well, I was, I guess you would call it part owner.
- Q. Will you tell the Court how you happened to acquire an interest in the Beacon Cafe—how you became part owner?
- A. Well, I believe that Jack Baumgardner—I don't remember how it came about—but we were talking about my recently having gotten out of the army and I wasn't doing anything and Mr. Baumgardner mentioned this Beacon Cafe and said, "You have had experience along that line; why don't you take that Beacon Cafe over?"

I don't remember the conversation, but anyway I agreed to take it.

Q. Did you invest any money in it?

A. No, not my own money, none of my own money.

Q. I show you a photostatic copy of an escrow statement dated January 4, 1949, and ask you if you can identify that?

Mr. Bouchard: 1949, did you say? [40]

Mr. Sullivan: Yes.

The Witness: Well, I don't recognize this. This was when I went out.

The Court: Will you speak a little louder, Mr. Witness?

The Witness: All right. I said I do not recognize this one because this was on the sale going out.

Q. (By Mr. Sullivan): I show you Respondent's Exhibit T for identification and ask you if you can identify that? A. Yes.

(The document above referred to was marked Respondent's Exhibit T for identification.)

Q. (By Mr. Sullivan): What is that?

A. Well, this is the escrow when I took over the Beacon Cafe.

Q. Whose interest did you take over in the Beacon Cafe, Mr. Staten?

A. Well, I believe it was Clyde Walker's. In fact, I am sure it was Clyde Walker's.

Q. Directing your attention to this "Deposited into escrow B Account Staten \$2,500.00"—did you deposit that into the escrow?

- A. No, that was in escrow when I went to the bank. [41]
  - Q. Do you know who deposited it in the escrow?
  - A. No, I don't.
- Q. Directing your attention to "James L. Staten, \$5,760"—did you deposit that amount in escrow? A. I did.
  - Q. Where did you get that money?
  - A. From Jack Baumgardner.
- Q. Will you tell the Court, if you can remember, when and how he gave it to you?
- A. We were sitting in a booth at the Beacon Cafe. Clyde Walker was there and Jack handed me this money in an envelope. I presume it was money. Anyway, I just took it over and put it in escrow and I got the receipt for it. I don't know if it was cash or if it was a check.

Mr. Sullivan: At this time, the Respondent offers Exhibit T for identification into evidence.

Mr. Bouchard: No objection.

The Court: Admitted.

(The document heretofore marked Respondent's Exhibit T was received in evidence.)

Mr. Bouchard: What is that?

The Clerk: Exhibit T.

Mr. Sullivan: T.

Mr. Bouchard: Thank you.

Mr. Sullivan: Your Honor, I have the account book [42] here, which is rather bulky to have in evidence. If Mr. Bouchard will agree I have two

(Testimony of James L. Staten.) photostatic copies here of two pages, which I am going to talk about.

May I have these marked Respondent's Exhibits next in line for identification?

The Clerk: Exhibits U and V.

(The documents heretofore referred to were marked Respondent's Exhibits U and V, respectively, for identification.)

Q. (By Mr. Sullivan): I show you Respondent's Exhibit U for identification and ask you if you can identify this——

Mr. Bouchard: Just a moment. The question is leading at that place. I suggest you can just ask him if he can identify it without telling him what it is.

The Court: Do you know what that is a photostat of?

The Witness: Well, only from the conversation that it is part of the account book here.

The Court: It is admitted and stipulated, isn't it, that this is a photostat of a sheet from the book of account?

Mr. Sullivan: That is right, your Honor.

Mr. Bouchard: I suppose that is what it is. It is the first time that I have seen it. I take it that it is a photostat of this sheet. [43]

Mr. Sullivan: Yes, it is.

Q. (By Mr. Sullivan): Can you identify it further?

- $\Lambda$ . I cannot identify it because it was kept by the public accountant.
- Q. If I show you the book, can you identify the book then?

  A. I can identify the book, yes.

The Court: What is the book?

The Witness: It is the book the accountant kept for the Beacon Cafe, but I cannot identify anything. I did not keep the books.

- Q. (By Mr. Sullivan): Directing your attention to the first item on Exhibit U for identification, at page 30 it shows cash on hand \$2,950.00—did you put that \$2,950.00 cash into the Beacon Cafe?
  - Λ. Not myself, no.
  - Q. Do you know who did?
- A. Well, I believe that \$950.00 of it was in the inventory and Jack Baumgardner gave me an additional \$2,000.00.
- Q. Now, I show you Exhibit V for identification and ask you if you can identify that?
- A. Well, I cannot identify it other than that I know it came from the book there, yes. [44]
  - Q. You know it came from the book there?
  - A. Yes.
- Q. Appearing here on October 1, 1947, is a journal entry of \$8,818.00—can you identify that—do you have any recollection of that?
  - A. None at all of that.

Mr. Sullivan: Thank you.

Q. (By Mr. Sullivan): Did you consider yourself the owner or the manager of the Beacon Cafe?

- A. I considered myself the owner—at least, the part owner.
  - Q. But you, yourself, had put no money into it?
  - A. No money at all.
- Q. When you had decisions to make, would you consult with Mr. Baumgardner?
- A. Well, not necessarily. I might have on one or two occasions when I first went in there.
- Q. Would you consider Mr. Baumgardner the owner? A. I did at that time.
  - Q. Did you know Jim Bruno? A. Yes.
- Q. Did Mr. Bruno ever indicate to you that he was the owner of the Beacon Cafe?
  - A. At one time, yes. [45]
  - Q. He did? A. Yes.
- Q. Will you tell the Court how he indicated to you that he was the owner?
- A. Well, I had been in the Beacon Cafe, I guess about—I am guessing about this now—I had been there probably three or four months and the place when I took it over was quite run down, and there were a lot of changes to be made and I was spending a lot of money and I had gone to Jack or he had come in there—anyway, it was about some minor changes and he said, "Well, go ahead," and I did.
  - Q. By "Jack," you mean—

The Court: Mr. Baumgardner?

The Witness: Yes. And after three or four months had passed, I went to him about a considerable amount to be paid. I had to tear a staircase

out of the front and it involved a good bit of money.

I said to Jack, "Is it OK to do it?"

And he said, "I don't have anything to do with it.

Jim Bruno owns the place."

I said, "I thought you owned it."

Q. (By Mr. Sullivan): My question was, did Jim Bruno ever indicate to you that he owned it?

A. Well, a few days after that, Jack brought Jim Bruno [46] in and I said, "Well, what do you want to do about it?"

He said, "You are running it. You have got the money, spend it," and I was in there more or less on my own.

I think there was only one more occasion that Jim Bruno ever came into the place.

Q. Did you discuss profits or losses with Mr. Baumgardner?

A. Yes, I think at that time, or it might have been later, why, as the place wasn't going any good, and he asked me if I wanted to buy out his interest as I had agreed when I went in there, I was supposed to get half of the place and put it in my name and at any time I could buy out the other half.

And I hadn't been there too long when I found it was a losing proposition and I said, "When my year is up, I do not want to have anything more to do with the place."

Q. You considered you had a gift of a half interest?

A. A gift of a half interest, should I decide to buy the other half.

Q. The gift of the half interest was contingent on your buying the other half?

- A. That is right.
- Q. How long did you manage the Beacon Cafe?
- A. One year to date.
- Q. Then what happened to your interest [47] in it?
- A. Well, two or three days before the 1st of October, why, Andy Lococo came in, said "I am buying out your interest," or buying the cafe. I don't remember which he said, but he said "I am buying you out."

And I said, "Well, have you talked it over with Jim?" And he said "Yes," and I said "That is good enough for me," because at that particular time we were not on too good speaking terms.

- Q. He did not ask you if he could buy your interest out?
  - A. No, he said he was buying it out.
  - Q. He told you he was buying it?
  - A. Yes.
- Q. Were you paid anything for the sale of your interest to Mr. Lococo?
- A. Not a cent. That is why I did not recognize that other escrow paper because I had nothing to do with it.

Mr. Sullivan: May I have this marked as Respondent's Exhibit next in order?

The Clerk: W.

(The document above referred to was marked Respondent's Exhibit W for identification.)

- Q. (By Mr. Sullivan): I show you Respondent's Exhibit W which has been marked for identification, which purports to be a photostat [48] of an escrow statement and I ask you if you can identify that?
- A. Well, I don't recall. I thought I had signed the one. My signature isn't on the same place, but it is an escrow paper, but I don't know if I have seen it before. I probably have, but I am not sure. I signed the final escrow paper.
- Q. Does that reflect the sale of your share of the Beacon Cafe to Mr. Lococo?
- A. Well, I am quite sure it does, like I say, I know that I have signed the one for the final sale, I had to.

Mr. Bouchard: Let me see it, please.

Mr. Sullivan: Pardon me.

Mr. Sullivan: At this time, I offer Respondent's Exhibit W for identification into evidence.

Mr. Bouchard: No objection.

The Court: Admitted.
The Clerk: Exhibit W.

(The document heretofore marked Respondent's Exhibit W, was received in evidence.)

- Q. (By Mr. Sullivan): How long did you manage the Beacon Cafe, Mr. Staten?
  - A. One year.
- Q. Did you report the Beacon Cafe on your individual [49] tax return?

A. Well, I think so. I don't know—in fact, I am quite sure I did. I can check on it.

Mr. Sullivan: Will you mark this document as Respondent's Exhibit next in order, for identification?

The Clerk: X.

(The document above referred to was marked Respondent's Exhibit X for identification.)

Q. (By Mr. Sullivan): I show you Respondent's Exhibit X for identification and ask you if you can identify that?

A. Well, I am sure this is the amount—I would have to check this, but I am sure that is the receipt I got for the money when I took it over to the escrow. \$5,760.00 is the figure and I am sure it corresponds to the other.

Q. That is the money you testified Mr. Baumgardner gave to you?

A. I am sure it is.

Mr. Sullivan: At this time, I offer Respondent's Exhibit X marked for identification, in evidence.

Mr. Bouchard: No objection.

The Court: Admitted.
The Clerk: Exhibit X.

(The document above referred to as Respondent's Exhibit X was received in evidence.) [50]

Mr. Sullivan: That is all of this witness. Cross-examine, Mr. Bouchard.

Mr. Bouchard: No cross-examination.

The Witness: Am I excused now?

The Court: Yes.

The Witness: Thank you.

Mr. Sullivan: Just a moment, please.

The Court: Maybe there are a few more questions for you.

Mr. Sullivan: That is all. Thank you, Mr. Staten.

The Court: You are excused.

(Witness excused.)

The Court: We will recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:20 p.m., a recess was taken until 2:00 p.m. of the same day.) [51]

Afternoon Session, 2:10 P.M.

The Clerk: The Court will be in session.

Mr. Sullivan: Your Honor, at this time I would like to apprise the Court that the evidence introduced this morning indicates that there is an increased deficiency in one year and I would like permission to amend the answer to conform to the proof and I would like to submit a written amendment tomorrow.

The Court: I will pass on that when you get your amendment ready.

Mr. Sullivan: Thank you, your Honor.

Mrs. Majorell.

The Clerk: Will you tell us your name, please? Mrs. Majorell: Melanie Majorell.

Whereupon,

### MELANIE MAJORELL

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Sullivan:

- Q. Mrs. Majorell, where do you live?
- A. 3001 Hollyridge Drive in Los Angeles.
- Q. What is your profession?
- A. I am an attorney at law. [52]
- Q. Are you here in answer to a subpoena duces tecum directing you to bring certain documents?
  - A. Yes, sir, I am.
  - Q. Have you brought those documents?
  - A. I have.
- Q. Do those documents relate to an escrow of the Beacon Cafe?

  A. In part.
- Q. Did you handle the escrow of the Beacon Cafe that was completed on January 10, 1947?
  - A. Yes, sir.

Mr. Sullivan: May I have this marked as Respondent's Exhibit next in order?

The Clerk: Y for identification, sir.

(The document above referred to was marked Respondent's Exhibit Y for identification.)

Mr. Sullivan: And this other one, also. The Clerk: And Z for identification.

(Testimony of Melanie Majorell.)

(The document above referred to was marked Respondent's Exhibit Z for identification.)

Q. (By Mr. Sullivan): I show you Respondent's Exhibit Y for identification and——

Mr. Bouchard: What is that, Mr. Sullivan?

Mr. Sullivan: Oh, sorry. [53]

- Q. (By Mr. Sullivan): I show you Respondent's Exhibit marked for identification Y, and ask you if you can identify that?

  A. Yes, I can.
  - Q. What is it?
- A. It is a photostatic copy of the yellow office copy that I have, or had, of the Beacon Cafe escrow, which I handled and which closed on January 10, 1947.
- Q. I hand you Respondent's Exhibit Z for identification and ask you if you can identify that?
  - A. Yes, I can.
  - Q. What is it?
- A. It is a photostatic copy of a yellow office copy that I have and had concerning the Beacon Cafe with notes and figures that I made at the time and they are indicated on it.

And also it contains the signature of Clyde Walker with reference to money that he received at the time that escrow was completed.

Mr. Sullivan: Will you mark this as the Respondent's Exhibit next in order?

Mr. Bouchard: Wait a minute. Are those some new exhibits?

(Testimony of Melanie Majorell.)

Mr. Sullivan: I am having them marked for identification. [54]

The Clerk: AA.

(The document above referred to was marked Respondent's Exhibit AA for identification.)

The Clerk: Will this be all one exhibit?

Mr. Sullivan: No, make that two.

The Clerk: BB and CC.

(The documents above referred to were marked Respondent's Exhibits BB and CC for identification.)

Mr. Sullivan: Mark this one as Respondent's Exhibit next in order, please.

The Clerk: DD.

(The document above referred to was marked Respondent's Exhibit DD for identification.)

Mr. Sullivan: Thank you.

- Q. (By Mr. Sullivan): Mrs. Majorell, what was your name at the time you prepared this escrow?
  - A. Melanie Diamond was my maiden name.
- Q. I show you Respondent's Exhibit, AA marked for identification and ask you if you can identify that document, Mrs. Majorell? A. Yes.
  - Q. What is it?
- A. This is the photostatic copy of my Trust Account check showing both the front and reverse of the check issued [55] on November 30, 1946, signed

(Testimony of Melanie Majorell.) by myself and payable to M. R. Baumgarden for \$32.74.

- Q. Can you tell me what that check was in payment of?
- A. I do not believe it was in payment of anything. I think my best recollection is that it was a return of balance for moneys paid for deposit—in other words, for overpayment of money that I had received.
  - Q. You received in connection with what?
- A. In connection with the Beacon Cafe.
- Q. I show you Respondent's Exhibit marked for identification as BB—— A. Yes.
  - Q. Can you identify that? A. Yes.
  - Q. What is it?
- A. I can identify the top sheet which is the photostatic copy of a check, both the front and the reverse side, which I recognize by my signature on the reverse side. It is a check for \$2,500.00.
  - Q. What was that check in payment of?
- A. Well, I can tell you that it was taken by me and deposited and used in connection with the Beacon Cafe escrow for the payment. The same amount was paid out on the same day by me, out of the same Trust Account wherein this check was [56] deposited and paid out as a down payment to the sellers, Mr. Carnes and J. Guelff, deceased.
- Q. I now hand you Respondent's Exhibit CC for identification and ask you if you can identify this document? A. Yes, I can.
  - Q. What is it?

(Testimony of Melanie Majorell.)

- A. I would identify this as being the photostatic copy of a check the same way by reason of the endorsement which bears my name last on it as having been received and applied in the Beacon Cafe as shown.
- Q. I hand you Respondent's Exhibit DD for identification and ask you if you can identify that document? A. Yes.
  - Q. What is it?
- A. It is a photostatic copy of a check. I can identify it also only by reason of the endorsement which bears my name last, as having been used in the receipt of moneys to be used in the Beacon Cafe as shown.
- Q. Did you prepare another paper in connection with this escrow from an affidavit for Mr. Clyde Walker? A. Affidavit?
  - Q. Yes. A. No, sir.
  - Q. Are you sure?
- A. You asked me, sir, and the answer is "no." [57]

Mr. Sullivan: May I now have this document marked for identification as Respondent's Exhibit next in order, please?

The Clerk: EE.

(The document above referred to was marked Respondent's Exhibit EE for identification.)

Q. (By Mr. Sullivan): I show you Respondent's Exhibit marked for identification EE and ask you if you can identify that? A. Yes.

(Testimony of Melanie Majorell.)

Q. What are these?

A. These are photostatic copies of bank deposit slips for deposit to my Trust Account in 1946. The first one is for the \$2,500.00 dated July 22, 1946, and the second one is November 30, 1946, showing a total of \$11,080.00.

Mr. Sullivan: At this time I would like to offer Respondent's Exhibits AA, BB, CC, DD and EE in evidence, your Honor, also Y and Z.

Mr. Bouchard: Well, I object to the offer of Respondent's Exhibit Z and Respondent's Exhibit Y on the ground that they are hearsay and photostatic copies of the notes of an attorney's office, which are hearsay and do not refer to the Petitioner in this case at all.

Mr. Sullivan: Your Honor, these are notes—photostatic copies of the notes that the witness has been referring [58] to and the notes of the escrow that have to do with these checks. If your Honor will examine them—

Mr. Bouchard: I make no objection to any other exhibits excepting those stated.

Mr. Sullivan: Those exhibits have to do with the Petitioner in this case.

Mr. Bouchard: The two exhibits which the Court is looking at, do not refer to the Petitioner in this case at all.

Mr. Sullivan: But they do refer to the Petitioner in this case.

The Court: The objection is overruled. As I understand it, they refer to the transaction which

(Testimony of Melanie Majorell.) was described this morning by the witnesses. They will be admitted.

(The documents heretofore marked Respondent's Exhibits Y, Z, AA, BB, CC, DD and EE, respectively, were received in evidence.)

Mr. Sullivan: That is all. You may cross-examine, Mr. Bouchard.

### **Cross-Examination**

# By Mr. Bouchard:

- Q. Mrs. Majorell, how long have you practiced in Hawthorne—I take it that your office is in Hawthorne? A .Yes.
  - Q. How long have you practiced there? [59]
  - A. Since 1941.
  - Q. You do not live in Hawthorne?
  - A. No, I do not.
  - Q. Are you acquainted with Mr. Baumgardner?
  - A. Yes, I am.
  - Q. How long have you known him?
- A. Since shortly after I came to Hawthorne. That is, to practice law.
- Q. During the period that he was chief of police of the City of Hawthorne?
  - A. He was chief of police there when I came.
- Q. Have you ever represented Mr. Baumgardner in any legal matters? A. Yes.
- Q. When you represented Mr. Baumgardner, were you employed by Mr. Baumgardner in con-

(Testimony of Melanie Majorell.)

nection with the Beacon Cafe matter?

A. No.

- Q. Were you the attorney for the executor or the executrix in the Guelff Estate? A. No, sir.
- Q. In connection with the purchase of the interest of the Guelff estate, were you representing Mr. Walker? A. Yes, sir.
- Q. You have not represented Mr. Baumgardner in connection [60] with any matter pertaining to the Beacon Cafe? A. No, sir.
- Q. Was Mr. Baumgardner ever in your office during the time that the escrows relating to the Beacon Cafe were being created and handled?
- A. I am sorry but that I could not remember because it was a period of months and the Beacon Cafe is located in the same big building and my office is one of the offices in the same building, very close, and the Beacon Cafe was also the lunch room, so I would have no way of recollecting it but it is very likely that I did see him in that period.
- Q. Some of the exhibits just offered in evidence are checks in which Mr. Baumgardner's name was mentioned as the payee, some of them over your signature. You do not know, do you, whether or not Mr. Baumgardner was acting for any other person in connection with the Beacon Cafe escrows, Mrs. Majorell?
- A. I have no knowledge as to the background, other than the actual transfer.
- Q. Just whatever the escrows show, that is the extent of your knowledge, is it?
  - A. As far as he is concerned.

Mr. Bouchard: That is all.

Mr. Sullivan: No further questions.

The Court: All right, thank you, Mrs. Majorell, you [61] are excused.

(Witness excused.)

Mr. Sullivan: Mrs. Strewn, please.

The Clerk: Will you tell us your name?

Mrs. Strewn: Irene Strewn.

Whereupon,

### IRENE STREWN

was called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

### Direct Examination

# By Mr. Sullivan:

- Q. Will you spell your last name, please, Mrs. Strewn? A. S-t-r-e-w-n.
  - Q. Mrs. Strewn, where do you live?
  - A. I live in Manhattan Beach.
  - Q. What is your business or occupation?
  - A. I am in the accounting business.
  - Q. Were you in the same business in 1946?
  - A. Yes, sir.
- Q. Directing your attention to the year 1946, did you have occasion to have as one of your clients the Beacon Cafe, Mrs. Strewn?

  A. Yes, sir.
- Q. Could you please tell the Court how you happened to [62] acquire this client?

A. My office was next door to a little cafe and the girls were going next door to get coffee. I then met Mr. Baumgardner, and a couple of other gentlemen, and Mr. Baumgardner said, "Just a minute, I have been wanting to talk to you."

So I said, "Yes." So we stepped to one side together and he said, "I have advanced" or "loaned"—I am not sure of the exact words, either "advanced" or "loaned money to Clyde Walker, and I have not been able to get any of it back."

And he said, "I think it is the people who are doing his books, and I was wondering if I could get him to give the work over to you. Perhaps if he did that, I would get some of my money back."

Well, I was very elated because it was a pretty good-sized cafe, and I said, "I will be glad to."

Q. I want to show you Respondent's Exhibit U which has been marked for identification and I ask you if you recognize this?

Now, it is stipulated between counsel that that is a photostat of a page of this ledger here (indicating).

- A. I think this came from not the first of the Beacon books—well, I am not sure, but I think this was the second set of books of the Beacon. [63]
  - Q. Is that your handwriting there?
  - A. Yes.
- Q. I show you Respondent's Exhibit V for identification and ask you if you can identify that?
- A. Well, that isn't my handwriting here at the bottom and I wouldn't know. There was a couple of

sets of books and I would not know what this was from. Oh, Staten, I am sorry, yes, this would be from Mr. Staten's book. It says it right here.

- Q. And what does this purport to be—could you explain it to us?
- A. I am sorry that I cannot explain it better but there was a former set of books. Mr. Walker brought his books to me and the accountant that had them at that time only had some work sheets and no books, and I think his books were set up from these work sheets and these were journals that were left in Mr. Walker's set of books.

This journal was taken from the former book, so these are not the originals. There is a set of books previous to that.

- Q. I direct your attention to the second entry on here, September 30 set up, assets left from previous half interest, that came from Mr. Walker's books?
  - A. That came from Mr. Walker's books.
- Q. I direct your attention to the third entry, the [64] set-up investment inventory half interest from escrow statement.
- A. This was a journal made in September and it would have been wrong because the escrow did not come from the bank until six months later. This entry was made at least six months before the escrow paper.
- Q. Directing your attention to Respondent's Exhibit V for identification, does this show the capital account and the investment in business?

A. Well, it is supposed to, but these journals came from a previous set of books and I do not have them and I don't know what Mr. Walker did with them.

Mr. Sullivan: At this time I would like to offer Respondent's Exhibits U and V for identification in evidence, your Honor.

Mr. Bouchard: I have to object to them as having no materiality and they do not seem to bear on any issue in the case.

The Court: What is the purpose of these?

Mr. Sullivan: These are from the books of the Beacon Cafe. Mrs. Strewn testified that she kept the books and they show the capital account and one of the issues in this case is who owns the Beacon Cafe and what investment was in it.

The Court: Is there any way to connect the [65] Petitioners with these sheets? I take it that they are sheets from the books of the Beacon Cafe?

Mr. Sullivan: Yes, sir. Rather than put in the big ledger here, I had those photostated and we have had testimony that the Petitioners had money go into the Beacon Cafe and this is the capital account of the Beacon Cafe.

Mr. Bouchard: It doesn't tie up with the Petitioners in any way.

The Court: Well, you might be able to make some tie in there. The objection is overruled. It will be admitted.

The Clerk: U and V in evidence.

(The documents heretofore marked Respondent's Exhibits U and V, respectively, were received in evidence.)

- Q. (By Mr. Sullivan): And for what period of time, Mrs. Strewn, did you keep the books of the Beacon Cafe?
- A. Well, I don't remember. I kept them for Mr. Walker, as I say, that was the books before these that you are looking at, the original set of books and then when Mr. Staten came in and I kept them for Mr. Staten until he went out, but I could not tell you about the period of time.

You have the books. You should be able to tell by the entries of the books, the time. [66]

Q. You stayed until Mr. Staten sold his interest, did you? A. Yes, until he went out.

Mr. Sullivan: That will be all, Mrs. Strewn, thank you.

Just a minute, Mr. Bouchard might want to cross-examine.

Mr. Bouchard: Yes, I do.

### **Cross-Examination**

By Mr. Bouchard:

Q. Mrs. Strewn, you testified that Mr. Baumgardner met you on the street and said that he would like to have you take a look at the Beacon Cafe books that he had?

A. Yes.

- Q. Who actually hired you?
- A. Mr. Walker.
- Q. Mr. Walker actually hired you?
- A. Yes.
- Q. To do the work? A. Yes, a month later.
- Q. Did he come to your office to employ you?
- A. Yes.
- Q. And you then went to work for Mr. Walker in taking care of the books?

  A. Yes. [67]
- Q. Do I understand your testimony correctly that when you started to take care of these books for Mr. Walker, he did not have any prior records?
- A. Just a few sheets of paper were all that I could find.
- Q. And in setting up the books for Mr. Walker, you did not have very much to work on, did you?
- A. No, I have to admit I was inexperienced and I took Mr. Walker's word for it.
- Q. Whatever entries you set up on the books, you obtained from Mr. Walker or were based on what Mr. Walker had told you?
  - A. That is right.
- Q. Now, did you prepare the income tax returns from Beacon Cafe—for the Beacon Cafe for any of the years?
- A. No, the Beacon Cafe returns—the income tax return was made for the individuals and there is another error, the income and the outgo and the losses were deducted by Mr. Walker on his return while he was there and Mr. Staten took them for the amount of time that he was at the Beacon Cafe.

- Q. At the time Mr. Walker was there, he accounted in his return for all of the profits and all of the expenses, did he?

  A. That is right.
- Q. And when Mr. Staten was there, he reported on his [68] individual return all the profits and all the expenses, is that right?

  A. That is right.
- Q. You did not file for the Beacon Cafe the partnership return, did you? A. No.

Mr. Bouchard: That is all.

Mr. Sullivan: Can I have Exhibits U and T, please, Mr. Clerk?

Mr. Bouchard: One more question, please.

Q. (By Mr. Bouchard): Anywhere on the books of the Beacon Cafe, does the name of Mr. M. R. Baumgardner or Jack Baumgardner appear?

A. No.

Mr. Bouchard: That is all.

## Redirect Examination

By Mr. Sullivan:

- Q. I show you Respondent's Exhibit Z and ask you whether you have previously seen a copy of that?
- A. Well, this is the escrow. I told you that was put into the book on September of the year before and in March of the following year, I got this from the escrow. It was put in the book merely from what they told me.
- Q. Do the figures on Respondent's Exhibit T appear on Respondent's Exhibit U? [69]

A. This is the \$7,500.00 here of the license in escrow. Yes, they appear. All but this \$2,500.00 doesn't show. Oh, I see it is over here (indicating).

Q. Yes.

A. But that was six months after the books were set up.

Q. Did you know when you were keeping the books that the Beacon Cafe was a partnership?

A. Well, it was a mystery. I never was able to figure it out. It was certainly set up wrong as far as I was concerned, but I was new in the business then and I made an error, no doubt as I should have made more inquiries but never did.

The Court: How do you know that you made an error, Mrs. Strewn?

The Witness: I took Mr. Walker's word for it. He said an uncle of his owned a part of it and I said, "How did you acquire it?" And he said that that was his business.

I took it from Mr. Walker. I didn't know what they paid for it. Mr. Walker told me what the fixtures and everything cost.

Mr. Sullivan: Thank you, that will be all.

Mr. Bouchard: That is all.

The Court: Thank you.

(Witness excused.)

Mr. Sullivan: I will call Mr. Adams.

The Clerk: Will you tell us your name, Mr. Witness? [70]

Mr. Adams: Raymond Turner Adams.

Whereupon,

## RAYMOND TURNER ADAMS

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Sullivan:

Q. Have you ever used any aliases—any other names, other than Raymond Turner Adams?

A. Yes, sir.

The Court: Try to speak as loudly as you can so that everybody will hear you.

The Witness: Yes, sir.

- Q. (By Mr. Sullivan): Do you remember any of them?
  - A. Yes, I use Roy Miller and Ray Miller.
- Q. Do you know the Petitioner in this case, Mr. Baumgardner? A. Yes.
- Q. Have you had any business dealings with Mr. Baumgardner? A. Yes, sir.
- Q. Would you relate to the Court the nature of these transactions you had with Mr. Baumgardner, giving the dates and [71] places as closely as you can, and not repeating any conversation excepting that which was made in the presence of Mr. Baumgardner?
- A. Well, I had association with Mr. Baumgardner when I received my taxicab permit. I had association with Mr. Baumgardner when there was a

(Testimony of Raymond Turner Adams.)
proposition regarding a deal of a house of ill-repute
at one time.

- Q. Will you explain what dealings you had with Mr. Baumgardner in respect to the house of ill-repute in Hawthorne?
- A. Well, when I was working for City Cab, well, my boss, Carl Ganatta, at that time he came to me with a deal to make contact with Mr. Baumgardner for the arrangement of a pay-off to operate a house under protective custody and that was in the early spring of 1948, around about May.

It was about that time, but I don't remember the date and Carl took me over behind the police station to a cafe which was next door. Mr. Baumgardner was there at that time early in the morning and Carl told him there was somebody else operating and Mr. Baumgardner said he would find out who it was some day.

And Mr. Baumgardner paid for the coffee for all of us and we went out to the alley behind the police station and Mr. Baumgardner said to us, "What is it you want?"

And Carl said, "Well, I brought Mr. Rae over here to [72] talk about this deal," so Mr. Baumgardner and Carl and I proceeded in and Mr. Baumgardner said to Carl, "What did I tell you?"

And Carl said, "You told me 10 per cent for the policeman's welfare fund and \$10.00 a day for you."

Mr. Sullivan: Just relax, Mr. Adams.

The Witness: It has been so long ago, I am a

(Testimony of Raymond Turner Adams.) little mixed up on it. It is a long time to remember all these things.

Then Mr. Baumgardner says: "Well, a madam gave me that." And he showed us a diamond ring on his finger. "I know what those places can make" and at that point, if I remember right, it was when the conference was over and he said that he would see us at the donkey baseball match.

- Q. (By Mr. Sullivan): Did you see Mr. Baumgardner at the donkey baseball game?
  - A. Yes, sir.
  - Q. Did you talk with him then?
  - A. Yes.
  - Q. Were any arrangements made?
  - A. No, sir, not at the donkey baseball game.
- Q. Who did you go to the donkey baseball game with?
- A. Carl Ganatta and Phyllis Miller—her name is Shirley something. [73]
  - Q. Who is Phyllis Miller?
- A. She was one of the girls that was operating with me at that time.
  - Q. She was a prostitute? A. Yes.
- Q. Did you again see Mr. Baumgardner after the donkey baseball game?
- A. I never saw Mr. Baumgardner myself again until a later date when I asked him for a cab permit at the Beacon Cafe.
- Q. Did you, in fact, operate a house of prostitution in Hawthorne? A. Yes, sir.
  - Q. Did you make protection payments?

(Testimony of Raymond Turner Adams.)

- A. Yes, sir.
- Q. Who did you make the payments to?
- A. Carl Ganatta.
- Q. How much were they?
- A. \$300.00 per week.
- Q. How many weeks did you make them for?
- A. Five weeks.
- Q. Were you accompanied on any of these payments by any one?
  - A. Once by Phyllis Miller.
  - Q. Did you get protection? [74]
  - A. Yes, sir.
- Q. Do you know whether Mr. Baumgardner got any of these payments?
  - A. I cannot state that I know that, no.

The Court: What was that answer, "no, sir," or you don't know?

The Witness: Well, no, sir; I don't know. I don't know how to say it, your Honor.

- Q. (By Mr. Sullivan): Did Mr. Baumgardner at the time of either when you met behind the police station or at the time of your meeting at the baseball game, indicate that Carl Ganatta was his agent in this business deal?
- A. He stated at the baseball game, "I will let you know later, Carl."
  - Q. Did Carl let you know later?
- A. He told me I would have to get a house in Hawthorne and I would have to notify him where the house was and that he would notify Mr. Baumgardner and I would make all payments to him,

(Testimony of Raymond Turner Adams.) that these were the orders that came from Mr. Baumgardner.

- Q. How long did you operate in Hawthorne?
- A. The total amount of time?
- Q. Yes.
- A. Just about six or seven weeks in Hawthorne itself.
- Q. Did you have the house operating [75] openly?
- A. It was wide open for anybody that wanted to come.
  - Q. For the whole six or seven weeks?
- A. No, sir; for the period of five weeks—two weeks I operated on the telephone system out of the house there but the five weeks it was open to all cabs and bell-boys who directed the traffic there.
- Q. Have you ever been convicted of a felony, Mr. Adams? A. Yes, sir.
  - Q. Did you serve time in prison?
  - A. Yes, sir.
  - Q. When did you get out? A. 1951.
  - Q. Have you been in trouble since then?
  - A. No, sir.
- Q. Do you have any reason to dislike Mr. Baumgardner, Mr. Adams? A. No, sir.

Mr. Sullivan: Thank you, Mr. Adams, that will be all.

## (Testimony of Raymond Turner Adams.)

## Cross-Examination

# By Mr. Bouchard:

- Q. Mr. Adams, are you married?
- A. Yes, sir.
- Q. Do you have any children? [76]
- A. Yes, sir.
- Q. When were you married—strike that, please. Were you married in 1948 and 1949?
  - A. Yes, sir.
  - Q. Did you have children then?
  - A. Yes, sir.
  - Q. Where were you living? A. Hawthorne.
  - Q. What was your business?
  - A. City cab driver.
  - Q. How long had you been a city cab driver?
  - A. About three years.
  - Q. All that time in the City of Hawthorne?
- A. No, sir; I was two and a half years in Hawthorne.
  - Q. Was your license at any time picked up?
  - A. My license was picked up.
  - Q. Your permit to drive a car? A. Yes.
  - Q. When was that done?
  - A. In 1948, I believe it was, sir.
- Q. Was it before the conversations that you stated you had with Mr. Baumgardner in the alley of the police station, Mr. Adams?
  - A. It was about six months later, sir.
  - Q. Was your license to drive picked up more

(Testimony of Raymond Turner Adams.) than once, [77] Mr. Adams? A. No, sir.

- Q. You have been convicted of pimping, have you not?

  A. That is right, sir.
- Q. And you have pleaded guilty to such charge, have you not? A. Yes.
- Q. And you have served time for such an offence, have you not?

  A. Yes.
- Q. You said you had no reason to have any ill-feeling towards Mr. Baumgardner, is that right?
  - A. That is right.
- Q. Do you have any reason to like him, particularly, Mr. Adams?

  A. Not necessarily.
- Q. In your testimony, you seemed to have a little difficulty in remembering?

  A. Yes, sir.
- Q. And you stated to counsel then questioning you that it was a long time ago and the details were a little hazy, is that right?

  A. yes, sir.
- Q. Isn't it a fact that you told the same story that you told here today when the Los Angeles County Grand Jury [78] was investigating vice in this area, that you testified to the same thing that you have testified today?

  A. Yes, sir.
- Q. Do you remember a lawsuit in which a man by the name of Fuller was a party?

  A. Yes.
- Q. And isn't it a fact that in that litigation you testified to exactly the same thing that you have testified to here today?

  A. Yes, sir.
- Q. Do you remember the lawsuit in which Mr. Baumgardner sued the Hawthorne Press, a newspaper in Hawthorne, for libel?
  - A. I remember part of it.

(Testimony of Raymond Turner Adams.)

- Q. You testified in that case, did you not?
- A. Yes, sir.
- Q. And you testified there to exactly the same things you have testified to here, did you not?
  - A. Yes, sir.
- Q. Isn't it a fact that within this last year and the year 1945, you testified in a matter in which Mr. Baumgardner was involved, and testified to exactly the same things you have testified to now?
  - A. Yes.
  - Q. That is correct, isn't it? [79] A. Yes.
- Q. Now, were you present—strike that. You testified in the Fuller case, didn't you?
  - A. Yes.
- Q. Did you hear Mr. Ganatta's testimony in that case, Mr. Adams? A. No, sir.
- Q. Where was the last place that you served your sentence in?

  A. At Chino Institution.
  - Q. Where is that? A. Chino, California.
  - Q. How far is that from Los Angeles?
  - A. About thirty some miles.
- Mr. Sullivan: I object to this, your Honor. I think counsel is going a little far afield. There is no doubt that he had a previous criminal record.

Mr. Bouchard: This is the last question I am going to ask him about that.

- Q. (By Mr. Bouchard): Did you know an officer by the name of McGowan who was a police officer in Hawthorne?

  A. Yes, sir.
  - Q. Did you know him pretty well?
  - A. Yes, sir. [80]

(Testimony of Raymond Turner Adams.)

- Q. What was his position in the police department, Mr. Adams?

  A. Patrolman, I suppose.
  - Q. Pardon? A. Patrolman.
  - Q. Patrolman? A. Yes.
  - Q. Was he ever an acting chief?
  - A. I don't know, sir.
- Q. Did he serve in the police department during the time that Mr. Baumgardner was chief?
  - A. Yes, sir.
  - Q. Were you paroled from Chino?
  - A. Yes, sir.
  - Q. When? A. 1951.
- Q. And didn't you make an affidavit two or three weeks before you received your parole in which you stated substantially some of the things about Mr. Baumgardner that you have stated here?
  - A. Yes, sir.
  - Q. And at whose request did you make that?

Mr. Sullivan: I will object, your Honor, I do not see that this is relevant. It doesn't go to the witness' impeachment at all. [81]

The Court: Objection overruled. I don't know where it is going to lead.

- Q. (By Mr. Bouchard): Answer the question.
- A. By the two State Officers and the acting chief of police of Hawthorne.
  - Q. What was his name?
- A. Carl was his first name. His last name I do not remember. And Officer McGowan—not officer McGowan—

- Q. And what was the occasion for preparing this affidavit?
- A. I definitely don't remember except for the Fuller case I suppose.
- Q. Isn't it a fact that Officer McGowan came down to Chino and requested that you make such an affidavit?
- A. Not Officer McGowan, the acting chief of police of Hawthorne.
  - Q. Did you give me his name?
  - A. No, I have forgotten it.
  - Q. Mr. McGowan was with him? A. Yes.
- Q. And Mr. McGowan was in the police department at the same time? A. Yes, sir.
- Q. Did you not testify in one of these proceedings that [82] the reason you made this affidavit was because you were up for parole and appeared before the adult authority and if you were asked to give such an affidavit, you were perfectly willing to give it, isn't that true?
  - A. Yes, sir; I was perfectly willing to give it.
- Q. Now, I think you testified that it was some time in May of 1948 that your boss, Mr. Ganatta, came to you and talked to you about the possibility of opening up a house of prostitution; is that right?
  - A. That is right, sir.
- Q. Tell me again just what Mr. Ganatta said to you, Mr. Adams?
- A. Mr. Ganatta called and asked me—he knew I was dealing and wheeling in women—and he said,

"Rae, I have had a contact made and if you don't operate in Hawthorne, you are not going to operate anywhere."

- Q. Had you ever operated in Hawthorne before? A. No.
  - Q. Where did you operate?
  - A. The Frontier House in Redondo Beach.
  - Q. Did you live in Redondo Beach?
  - A. No, I lived at Hawthorne.
- Q. Did you ever operate such a house at any place besides Redondo Beach?
  - A. No, sir. [83]
  - Q. How long had you operated a house there?
- A. This is unusual but may I ask you a question? I misunderstood your question.
  - Q. You don't understand? A. No.

Mr. Bouchard: All right, Miss Reporter, read the question, please.

The Reporter: Yes, sir.

(Question read.)

The Witness: It was the question before that.

Mr. Bouchard: All right, Miss Reporter, read
the question before that, please.

The Reporter: Yes, sir.

(Question read.)

The Witness: I operated a house in Hawthorne. I made a mistake in my previous answer.

Q. (By Mr. Bouchard): Prior to May of 1948?

A. No, sir.

- Q. But you had operated a house of prostitution as you said that Mr. Ganatta knew you had been wheeling and dealing in women?

  A. Yes.
- Q. For how long a time had you been doing that?

  A. About two months. [84]
  - Q. At Redondo?
  - A. Redondo Beach Boulevard.
- Q. And that was the only place and the only time that you operated such a house?
  - A. Yes, sir.
- Q. That, of course, isn't the only time that you were living off the earnings of women, was it?
  - A. I wasn't living off their earnings.
  - Q. You never did live off their earnings?
  - A. No, sir.
  - Q. At no time? A. No, sir.
- ..Q. What was the idea of running these houses of prostitution or wheeling and dealing in women—was it just a hobby with you?

  A. No, sir.
- Q. It was something you did for profit, wasn't it, Mr. Adams?

  A. That is right.
- Q. Let us get back to this conversation with Mr. Ganatta. He told you that you would have to operate a house in Hawthorne or you would be out of business?

  A. That is right.
  - Q. Did he say why that was so?
- A. He said that Mr. Baumgardner had ordered him to [85] contact, to make contact with me on it.
- Q. Did he tell you that Mr. Baumgardner wanted a house of prostitution in Hawthorne?
  - A. He said he wanted the pay-off.

- Q. Now, you are sure of this testimony, are you?
- A. Yes.
- Q. That Mr. Ganatta said Mr. Baumgardner told him he wanted you to operate a house of prostitution in Hawthorne because he, Mr. Baumgardner, wanted a pay-off?
  - A. The pay-off was later.
- Q. Well, you tell me what Mr. Ganatta said to you, Mr. Adams.
- A. Carl Ganatta told me that Mr. Baumgardner had contacted him, saying that he wanted me to move into Hawthorne or I would not operate any place and he explained to me that I would be crossed off and go to jail. That is the exact wording and at a later date, Mr. Carl Ganatta said that Mr. Baumgardner wanted the pay-off.
- Q. Mr. Baumgardner had nothing to do with the operating of the police department in Redondo Beach, had he?

  A. No, sir.
- Q. Now, you are sure that that conversation that you had with your boss, Mr. Ganatta, was some time in May of 1948, are you?
- A. It was a little earlier than that, the conversation [86] requesting me to move in. I quibbled with the idea and did not move in for three weeks.
  - Q. What held you back? A. Phyllis Miller.
  - Q. You mean she did not want you to do it?
  - A. She did not want me to pay off.
- Q. It was prior to May of 1948 then that your boss suggested the operation of this prostitution

(Testimony of Raymond Turner Adams.) house, was it? A. Yes.

- Q. And you could not get Phyllis Miller immediately to go into the deal with you?
  - A. She thought the price was too high.
  - Q. What was the price?
- A. Ten per cent and \$10.00 a day to Mr. Baumgardner.
  - Q. Ten per cent of her earnings? A. Yes.
- Q. So that would only leave her nine per cent of her earnings?

  A. That is right.
- Q. Weren't you getting something out of her earnings? A. I got——

Mr. Sullivan: I object to that, your Honor.

The Court: Objection overruled.

- Q. (By Mr. Bouchard): Isn't it a fact that when you did make this deal with [87] Phyllis Miller, that you were to get half of her earnings?
- A. I was to get fifty per cent of her earnings but I never got it.
  - Q. That was your arrangement with her?
  - A. Yes.
- Q. That you were to get fifty per cent of her earnings, was it?

  A. That is correct.
- Q. Now, which did she think was too high, the \$10.00 a day to Mr. Baumgardner or the fifty per cent of her earnings to you?
- A. The ten per cent to Mr. Baumgardner and the ten dollars a day.
- Q. She did not object to paying you half of the earnings she made, but she did object to paying Mr. Baumgardner?

- Λ. She would not have had any earnings if it had not been for me.
  - Q. You are responsible for her earnings?
  - A. Yes.
- Q. For bringing the business to the prostitution house? A. Yes.
- Q. So it took you two or three weeks after this suggestion was made by Mr. Ganatta to you before you could sell Phyllis Miller on the idea that that was what you should [88] do? A. Yes.
- Q. Was it around May of 1948 that you opened up the house?
- A. Yes, for some reason Mrs. Miller changed her mind. An officer had been into the house and talked to her.
- Q. You say you opened this house in May of 1948 in Hawthorne? A. Yes.
  - Q. At what address?
  - A. I believe it is 139 East 141st Street.
  - Q. And did you rent the house?
  - A. Yes, sir.
  - Q. Who made the arrangements for rental?
- A. Phyllis Miller and I and the landlord. We made a lease on the place for a year.
  - Q. Was the lease in writing? A. Yes.
- Q. Did the landlord know what you wanted to do with the place?

  A. Not exactly.
  - Q. Did he have any idea?
  - A. He did at a later date.
  - Q. It wasn't at a much later date, was it?

47.1

A. It was a month or so later, yes, sir. [89]

- Q. So the landlord did not find out about it until you got into difficulties?
  - A. We did not get into any difficulties.
  - Q. You did not get into any difficulties?
  - A. No.
- Q. Now, did you and Phyllis Miller go together to the landlord and make this arrangement?
  - A. Yes, sir.
  - Q. And the lease was in writing?
  - A. Yes, sir.
  - Q. And it was signed by the both of you?
  - A. Yes, sir.
  - Q. What was the rental?
  - A. \$125.00 a month.
  - Q. And you rented it for a year?
  - A. Leased it for a year.
  - Q. Leased it for a year? A. Yes.
- Q. What about the utilities—did you make any arrangements about these things? A. Yes.
  - Q. Who made those arrangements?
  - A. Definitely I don't remember.
- Q. But anyhow, in May of 1948, you made this lease and you opened this house? [90]
  - A. Yes, sir.
- Q. How many girls did you have working for you, Mr. Adams?
  - A. When I first opened, I had only one.
  - Q. And that was Phyllis Miller? A. Yes.
- Q. And how long did you continue to operate that house, the address of which you have just given me, as a house of prostitution?

- A. About seven weeks.
- Q. About seven weeks? A. Yes.
- Q. Now, it was Mr. Ganatta that told you if you wanted to operate a house in Hawthorne you would have to pay ten per cent of the earnings of the house, to go into the police fund and that you would have to pay \$10.00 a day to Mr. Baumgardner?
  - A. That is correct.
- Q. Now, was that the arrangement that was made or was there an arrangement to pay a fixed sum?
- A. The arrangement was made when we contacted Mr. Baumgardner to make a fixed sum. I cannot state that Mr. Baumgardner definitely got that money.
- Q. I understand that, sir. If any money was paid by you for this purpose in each and every instance, no matter how [91] many or how few, the money was paid to Mr. Ganatta?

  A. Yes, sir.
- Q. You never paid a dime to Mr. Baumgardner, did you? A. No, sir.
- Q. I think you testified on your direct examination that you made—correct me if I am wrong——
  - A. Yes, sir.
- Q. I think my recollection is that you testified that you made five payments of \$300.00 each to Mr. Ganatta?

  A. That is correct.
  - Q. That would be a total of \$1,500.00?
  - A. Yes, sir.
  - Q. Did you get that money from Phyllis Miller?
  - A. Yes, sir.

- Q. From her earnings? A. Yes, sir.
- Q. You say that you continued to operate that house for a period of about six or seven weeks?
  - A. Yes, sir.
- Q. Didn't you pay anything the sixth and seventh weeks? A. No, sir.
- Q. At any rate, after six or seven weeks of operation at that location, you moved out, didn't you?
- A. Well, we were having quite an issue with the [92] landlord.
- Q. Were you having any with the police department, Mr. Adams? A. No.
  - Q. But you moved out? A. Yes, sir.
  - Q. And did you continue operations?
  - A. Yes, sir.
  - Q. Where?
  - A. Out of cabs and motels.
  - Q. Did you have headquarters?
  - A. City Cab, Hawthorne.
- Q. So you gave up operating a house and you ran another kind of service? A. Yes, sir.
- Q. Is that what you are—is that what is called the "call house business"?

  A. Yes, sir.
- Q. As a matter of fact, you operated out of a garage, didn't you?

  A. Yes.
- Q. You had the telephone installed in the garage, hadn't you?
  - A. No, sir; it was already installed.
  - Q. And you operated out of that garage? [93]
  - A. Yes, sir.

- Q. Now, when did you first meet Phyllis Miller?
- A. 1948.
- Q. Had she ever worked before for you?
- A. No, sir.
- Q. Isn't it a fact that the way you got into this particular deal was that Phyllis Miller was introduced to you through another cab driver and she told you that she wanted to open a house of prostitution but that she would need protection and wanted to see if it could be arranged and if you could arrange it?
  - A. That was the original way of it.
  - Q. Pardon?
  - A. That was the original way of it, yes, sir.
- Q. Why did you have trouble with your landlord?
- A. Well, he had sold the house and the new owner wanted the house and I had a lease on it and he wanted me to give up the lease suddenly.
- Q. Did the prospective purchaser of the house at any time inspect it while you were occupying it, and go through the house? A. Yes, sir.
  - Q. Day or night? A. I don't remember.
- Q. Well, did you give up the lease at the landlord's [94] request? A. After a struggle.
- Q. Well, when you gave it up, did the landlord pay you anything for giving it up?
  - A. I don't remember.
- Q. Now, you said something in your testimony about the fact that—could we have a recess, please?

The Court: Yes, I was just going to suggest that to you.

We will recess now.

(Short recess taken.)

The Clerk: The Court is in session.

The Court: If it is all right with the parties, I would like to run to about a quarter to 5:00 and come back in the morning.

Mr. Bouchard: I know what your Honor's problem is. I was hoping I could get down to the office about a quarted to 5:00. If we could adjourn about 4.30, that would just be fine. This is off the record.

The Court: Off the record.

(Discussion outside the record.)

The Court: Back on the record.

Mr. Bouchard: May I have the last question read, please?

The Reporter: Yes, sir. [95]

(Question read.)

- Q. (By Mr. Bouchard): Now, Mr. Adams, I think you testified that this house of prostitution that you operated in Hawthorne with Miss Miller, was open for six or seven weeks, did you not?
  - A. Yes, sir.
- Q. And were you operating as a house of prostitution at that place during all of these six or seven weeks?

  A. Yes, sir.
- Q. And during that time, was Miss Miller the only inmate of the house? A. No, sir.

- Q. Who else was there?
- A. The maid and at a later date, two other girls were there.
  - Q. Did the maid engage in acts of prostitution?
  - A. No, sir.
  - Q. You say you had two other girls?
  - A. Yes.
- Q. How long a period of time were those two girls there?

  A. Three days.
  - Q. Three days? A. Yes.
- Q. So out of the six or seven weeks that you operated, [96] Miss Miller was the only prostitute in the house except for two or three days, when you had two other girls?

  A. Yes, sir.
- Q. Were those two other girls there at the beginning of your operation or at the end of it?
  - A. Yes.
- Q. They would be there in the six or seven weeks, is that right?
- A. No, they were there about the last of the fifth week.
- Q. And you had the two girls for two or three days? A. Three girls.
  - Q. Three girls?
  - A. Well, Phyllis and the other two.
- Q. In the last part of the fifth week, Miss Miller was the only prostitute?

  A. That is right.
- Q. Now, isn't it a fact, Mr. Adams—strike that out, please. I think you testified that the house was open to anybody that wanted to come for the period of time that you occupied it, is that right?
  - A. That is right.

- Q. So that for that six or seven week period it was open to anybody?
  - A. Only for the five paid weeks. [97]
  - Q. Only for the five paid weeks?
- A. For the five paid weeks it was open to everyone, that is correct.
  - Q. Then you stayed on there for two weeks?
  - A. Yes.
  - Q. And you lived in it, in the house?
  - A. Yes.
  - Q. And no acts of prostitution were committed?
  - A. No, sir.
- Q. And that is when you started to operate the call business? A. Yes, sir.
- Q. Now, isn't it a fact that that house was only open for a period of eight days? A. No, sir.
  - Q. That isn't true? A. No, sir.
- Q. Isn't it a fact that after the end of eight days you and Phyllis Miller quit operating that house as a house of prostitution, but you used it as your headquarters and operated in hotels and motels and other places?

  A. No, sir.
  - Q. That isn't true? A. No, sir.
- Q. Do you remember the last time that you testified in [98] a proceeding involving Mr. Baumgardner, in which you gave similar testimony, do you recall the case—you do, do you not?
  - A. Yes, sir.
- Q. Do you remember being asked these questions and making these answers:
  - "Q. So during all the five weeks except for those

(Testimony of Raymond Turner Adams.) two days, Phyllis Miller was the only prostitute in the house, is that right?

"A. Outside of those last two days, eight days of regular operation is all we operated. The rest of the time"—

And then the court said: "What is that?" And your answer was:

"A. We had our doors wide open for eight days, then we got orders to close them."

Do you remember those questions being asked and you making those answers?

- A. Not like that, no, sir.
- Q. You don't remember that?
- A. Not like that, no, sir.
- Q. If you made those answers to those questions were they true or false?
  - A. They would be false.
- Q. Now, I want you to be sure about this. You never [99] testified in any other proceeding, in this last proceeding involving Mr. Baumgardner, you did not testify in answer to a question by the Court, the Judge: "We had our doors wide open for eight days. Then we got orders to close them."

You don't remember that?

- A. I don't remember.
- Q. And then the Court said—do you remember him saying this to you: "I thought you said you operated five weeks?"

And you answered, "We did. We operated on the call system after that. We lived in the house itself and operated from that base."

And the Court said, "The first eight days you operated in the house."

And your answer was: "Wide open."

And the Court said: "And after the first eight days of this five-week period, then you used a call system?"

And your answer was, "Yes, and worked in motels."

And the Court said: "And the acts of prostitution occurred elsewhere?"

And you answered: "In motels, yes."

Do you remember the Judge asking you those questions and you making those answers?

- A. I don't remember that, no, sir.
- Q. And if the Judge asked you those questions and you made those answers, they were true, weren't they? [100]
  - A. Not about the eight days.
  - Q. They were not? A. No, sir.
- Q. You were sitting about as close to the Judge in that case as you are sitting to the Court in this case, were you not?

  A. That is right, sir.
- Q. Now, how often did you and Miss Miller divide up the earnings?
- A. Well, normally, we divided each day what I had coming and what she had to—what I had coming and what had to go out.
- Q. In other words, at the end of each day, the usual practice was for you to get fifty per cent of what she had taken in?

  A. I never got it.
  - Q. You never got it?

- A. No, it all went to Mr. Baumgardner.
- Q. Didn't you make any money in that house?
- A. About \$100.00 clear.
- Q. After paying off this \$300.00 a week—was that the figure per week?
  - A. The payoff, yes, sir.
  - Q. The payoff was \$300.00 a week?
  - A. Yes. [101]
- Q. So, after you made the payoff, you only had \$100.00 left? A. We averaged \$100.00 total.
  - Q. A day? A. In the whole average.
  - Q. For six or seven weeks?
  - A. That is right.
  - Q. I thought you said it was wide open?
  - A. It was.
  - Q. But nobody patronized it?
- A. Well, after all, it takes time to establish a place.
- Q. How long did it take you to establish this place, Mr. Adams?
- A. Well, the cab trade just about under four weeks.
  - Q. About four weeks? A. Yes, sir.
- Q. Well, if it is a fact that you only operated eight days wide open, you did not do very well in those eight days, did you?
  - A. We did not quite make the tab.
  - Q. When did you last see Miss Miller?
  - A. I saw her today.
  - Q. Today? A. Yes. [102]
  - Q. Where did you see her? A. In the hall.

- Q. Outside this courtroom?  $\Lambda$ . Yes, sir.
- Q. Did she tell you that she had been subposnaed as a witness?  $\Lambda$ . Yes, sir.
  - Q. What was her condition when you saw her?
  - Λ. Well, she was pretty happy.
  - Q. Do you mean by that she was pretty high?
- A. I would say she had been having a few drinks.

Mr. Sullivan: Your Honor, we subpoenaed Miss Miller and we sent her home. She wasn't in a condition to testify.

- Q. (By Mr. Bouchard): Mr. Adams, you are pretty well acquainted with the City of Hawthorne, aren't you?

  A. Yes.
  - Q. You know the layout of the streets?
  - A. Fairly well.
- Q. Was this house that you operated with Miss Miller in a respectable neighborhood?
  - A. Oh, yes.
- Q. I think you testified that you appeared as a witness—you were subpoenaed by the Hawthorne Press as a witness in the [103] libel case which Mr. Baumgardner started against them?
  - A. I don't remember.
- Q. You do remember that you testified in that case, don't you?

  A. I don't remember.
- Q. You don't remember that you testified in that case, Mr. Adams?
  - A. I don't remember which one it was.
- Q. Do you remember in the last case involving Mr. Baumgardner when you testified on this sub-

(Testimony of Raymond Turner Adams.) ject, that you were asked these questions and made these answers:

- "Q. And you appeared as a witness for the Hawthorne Press in that case, did you not?
  - "A. I was subpoenaed as a witness, yes.
  - "Q. And you appeared as a witness?
  - "A. Naturally.
  - "Q. And you testified? A. Yes, sir." Do you recall those questions and answers?
  - A. No. sir.
- Q. Now, isn't it a fact that within about eight days after you and Phyllis Miller opened this house in Hawthorne, that the house became "hot" and you were in trouble with the police department?
- A. Never had a day of trouble while we were in that [104] house in Hawthorne.
  - Q. Weren't you told to close your doors?
  - A. On the fifth week.
  - Q. Who told you to do that?
  - A. Carl Ganatta.
- Q. I thought you testified a few minutes ago that the reason you closed the doors was because the landlord wanted to terminate the lease?
  - A. No, sir, I said we moved.
- Q. Then you did not give up the house because the landlord wanted you to?
- A. I gave up the house because Carl Ganatta wanted me to.
  - Q. Mr. Ganatta wasn't the landlord, was he?
  - A. No.
  - Q. But Mr. Ganatta told you to close up?

- A. Yes.
- Q. Didn't Mr. Ganatta tell you that the house was "hot"?

  A. Yes, sir.
- Q. And isn't it a fact that you were tipped off by somebody, other than Mr. Ganatta, that it was "hot"?

  A. No, sir.
- Q. Isn't it a fact that Officer McGowan tipped you off that it was "hot"?

  A. No. [105]
- Q. Do you recall, for a portion of the time, in the latter part of 1950 and the early part of 1951, that Mr. Baumgardner wasn't connected with the police department—do you know that from civil procedure?

  A. I don't know.
- Q. You know he wasn't chief of police during that period of time?

  A. I don't know that.
  - Q. You don't know that?
  - A. I don't know.
- Q. You know that Mr. McGowan was on the police department, do you not? A. Yes.
- Q. And do you know that some time in 1951 Mr. Baumgardner was reinstated as chief of police, do you not? A. Yes, sir.
- Q. And you also know that immediately after Mr. Baumgardner's reinstatement as chief of police, Mr. McGowan left the police department in Hawthorne?
  - A. I don't know whether he left or not.
  - Q. Do you know where he is now?
  - A. No, sir.
  - Q. Is he in Hawthorne?
  - A. I don't know, sir.

- Q. You haven't seen him? [106]
- A. No, sir.
- Q. Did Mr. Baumgardner, while he was chief of police, have occasion to pick up your license to drive a cab in Hawthorne? A. Yes, sir.
- Q. Did he give you any reason as to why he picked it up?
  - A. He said I did not come back for the renewal.
  - Q. Did he tell you anything else?
  - A. No, sir.
- Q. Did he say the reason he picked up your license was because you had falsified your application?

  A. No, sir.

Mr. Bouchard: I am pretty near through, your Honor.

- Q. (By Mr. Bouchard): In the last case in which Mr. Baumgardner was involved, and in which you appeared as a witness, did you hear the testimony of Phyllis Miller?
  - A. No, sir, I left after I finished as a witness.
- Q. You left after you finished as a witness, so you did not hear her testimony? A. No, sir.
- Q. In your preparation to appear here, as a witness, today, have you talked to anybody about this case? [107]
- A. I have only seen the special agent who handled the summons and that is all.
  - Q. That is Mr. Vitello sitting here?
  - A. No, sir.
  - Q. Who was it? A. I don't know.

- Q. Did you talk to Mr. Sullivan or Mr. Vitello about your testimony here today?
- A. I haven't talked to anyone about any testimony here today.
- Q. Did you talk to any agent of the Government?

  A. No, sir.
- Q. Now, in this so-called payoff that you have been talking about, the \$300.00 a week, which I think you said amounted in total to \$1,500.00.
  - A. Yes, sir.
- Q. Half of that was paid by Phyllis Miller and half of it by you, is that correct?
  - A. Except the last part.
  - Q. Pardon? A. Except the last part.
  - Q. Which part did you pay?
  - A. The last week I paid it myself.
  - Q. To Mr. Ganatta?
  - A. That is correct. [108]

Mr. Bouchard: Excuse me just a minute, your Honor.

You may have your witness.

Mr. Sullivan: No questions.

The Court: That is all, Mr. Adams, thank you.

(Witness excused.)

Mr. Sullivan: At this time, your Honor, I would like to have these documents marked for identification as Respondent's Exhibits next in order.

The Clerk: GG, HH, II, JJ and KK have been marked for identification.

(The documents above referred to were marked Respondent's Exhibits GG, HH, II, JJ and KK, respectively, for identification.)

Mr. Sullivan: Do you want to see them?

Mr. Bouchard: I have already seen them.

Mr. Sullivan: Yes.

At this time, your Honor, I would like to offer these exhibits in evidence. Mr. Bouchard agreed to stipulate that they are bank records and they speak for themselves.

The Court: The exhibits may be admitted.

The Clerk: Exhibits GG through KK are admitted in evidence.

(The documents heretofore marked Respondent's Exhibits GG, HH, II, JJ and KK, respectively, were received in evidence.)

Mr. Sullivan: Mr. Bouchard has agreed to stipulate [109] that in 1946 Mr. Baumgardner loaned Mr. Gibson \$6,500.00 and received \$6,900.00 and the note was received in 1946; is that correct?

Mr. Bouchard: Just a second.

Mr. Sullivan: The stipulation is that Mr. Baumgardner loaned Mr. Gibson \$6,500.00 and received back \$6,900.00 in 1946.

Mr. Bouchard: And when did he make the loan—1945, and in 1946 he received \$6,900.00. So stipulated.

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Mr. Sullivan: Right.

Mr. Vitello.

The Clerk: Tell us your name, please.

Mr. Vitello: Charles Vitello.

Whereupon,

### CHARLES VITELLO

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Sullivan:

Q. Mr. Vitello, what is your business or occupation?

A. I have been a special agent of the intelligence division of the Internal Revenue division, Los Angeles County section, since January of 1946.

Q. And as a special agent of the intelligence division [110] of the Internal Revenue Division, what work—what are your principal duties?

A. To make income tax investigations, to determine whether or not the taxpayers are conforming to Internal Revenue laws, to determine whether taxpayers are violating Internal Revenue laws, and to accumulate the evidence to sustain prosecution.

Q. Were the tax returns of Mr. and Mrs. Milford R. Baumgardner assigned to you for investigation? A. Yes, sir, in April, 1952.

Q. And when did you first meet the taxpayers?

A. I met Mr. Baumgardner on August 11, 1952, at the Hawthorne police department.

Mr. Bouchard: Was that August?

The Witness: August 11, 1952, at the Hawthorne police station.

Q. (By Mr. Sullivan): Will you tell the Court

what happened in this matter?

A. Yes, sir.

Mr. Bouchard: Just a moment. The witness appears to be testifying from something and there is no showing that he needs that. I think he should be able to testify without notes.

The Witness: We talked about a number of subjects [111] and I would not be able to testify without my notes.

- Q. (By Mr. Sullivan): Did you make notes at the time of this meeting or directly thereafter?
  - A. Yes.
  - Q. Are those the notes you have with you?
  - A. Yes.

The Court: He has no recollection of the evidence without reference to his notes?

Mr. Sullivan: I don't think so.

The Court: Is that right, you have no recollection of the evidence without reference to your notes?

The Witness: I would only be able to recall very minor details. I would not be able to cover all the ground that we talked about without my notes.

The Court: Will these notes refresh your memory, Mr. Vitello?

The Witness: Yes.

Mr. Bouchard: If they have to refresh it as to specific questions, not as to the history of the world——

The Court: Well, Mr. Bouchard, what is your objection?

Mr. Bouchard: My objection is that he cannot use his notes unless he needs them to refresh his

recollection and it has got to be with respect to a particular question. He [112] said, "I cannot cover enough ground unless I do it," and——

The Court: I think that is a good objection.

Mr. Sullivan: However, as to the question I asked—I asked him what happened in the matter—

- Q. (By Mr. Sullivan): Will you tell us what happened, Mr. Vitello, without reference to your notes?
- A. I introduced myself to Mr. Baumgardner and showed him my credentials and I told him that I had his income tax returns for assignment for investigation and—shall I proceed now to go into what we talked about?
  - Q. Yes, please.
- A. I asked him what records he had pertaining to his income that was reported on the tax return and he said he had none.

I asked him who prepared his returns and he told me that Mr. Ludolph prepared them and he gave me his address at the time, and then I asked him if the returns which I then had in my possession were his returns, and he said they were his returns.

I think I had the 1946, 1947 both for Mr. and Mrs. Baumgardner and the 1948, 1949 and 1950 returns in my possession. Mr. Baumgardner said they were returns for himself and his wife.

I asked him about the source of commission income [113] on his return reported on the 1947, 1948 and 1949 returns, I believe in 1947, he showed \$2,000.00, 1948 \$3,000.00 and I believe in 1949,

\$6,000.00 commission income and his answer to that was he would be afraid to tell me because if he told me, he would lose his job and refused to tell me the source of that income.

Then we talked about some of his personal background. He was born in 1903 in Oklahoma and he married in 1926 and he had two children, then, both under twenty-one years of age and he said he had a pauper education.

And that prior to coming to California, he had worked for a transfer company for five or six years and worked for a grecery firm for one year and worked as a motion picture operator for several years. Then he came to California about 1924 or 1925 and joined the Hawthorne police force in 1925, I believe, and he had been there ever since, at that time, when he—at that time except for a few short periods—when he was either relieved from his duties or he wasn't acting as a member of the police department.

I believe he said he became chief in 1937. I asked him if his wife had any income during her marriage and he said, no, she never had any source of income excepting for a few years when she operated Milady's Dress Shop. And Mr. Baumgardner said the records of that firm were kept by Irene [114] Strewn.

Q. Did you ask him if he had any non-taxable income, Mr. Vitello?

Mr. Bouchard: Objected to as leading.

The Witness: I asked him—

The Court: Objection overruled.

The Witness: I asked him if all of his income was returned on his tax returns and he said, "yes." I asked him if he had omitted any income and he said "no." I asked him if he had any assets in the name of nominees or other people and Mr. Baumgardner said, "No, excepting for cars which I had in the name of my children." I think it was in his daughter's name.

He said he had no interest in any other businesses except those that were shown on the return at the time. He mentioned here he got the cars—I think he had a DeSoto, a Pontiac and a Chrysler over the various years. I asked him if he ever had any cash on hand and he said "no." And then he said, "Just pocket money, about \$100.00."

- Q. (By Mr. Sullivan): Did you go into that any further at that time, Mr. Vitello?
- A. Pardon?
- Q. Did you go into that any further at that time?
- A. I asked him if he ever had any cash in a safe deposit box and he said, "No, I never kept my cash in a safe [115] deposit box," or in his home. He said he never inherited any money. He said he never had any gifts.

And then I asked him if I might get some of his personal records and books and he said I could go home and get them from his wife.

I am sure that we talked about other things but I cannot remember. It is difficult trying to remember as we talked about lots of things at that time and it is difficult trying to remember everything we talked about at that time with reference to the subject matter, without reference to my notes.

Q. You cannot remember anything more without reference to your notes as to this conversation you had?

A. That is right.

Mr. Sullivan: Can the witness refer to his notes to refresh his memory as to what was discussed in addition to his testimony?

The Court: Do you object to that, Mr. Bouchard?

Mr. Bouchard: Yes, I object, certainly, and the Court's ruling still stands.

The Court: Well, I will confess that the law on this question of notes taken at the time in question is very hazy in my mind and if we can wait until tomorrow morning, I will take a look at it.

Mr. Sullivan: All right, I will refresh my mind too, [116] your Honor.

Mr. Bouchard: I will have to, too.

The Court: We will recess until 10.00 o'clock tomorrow morning.

(Witness excused.)

(Whereupon, at 4:25 o'clock p.m., Tuesday, November 29, 1955, the hearing in the above-entitled matter was adjourned to Wednesday, November 30, 1955, at 10:00 o'clock a.m.) [117]

## Proceedings

The Clerk: The Court is in session.

Mr. Sullivan: Your Honor, as to the point we were arguing yesterday in the course of the proceeding that Mr. Vitello was using notes to refresh his memory is past recollection revived——

The Court: Revised or revived?

Mr. Sullivan: Revised, your Honor, and on reference to Wigmore, any writing may be used to refresh his recollection, that is, it can be before trial, it is just an aid to the memory and Mr. Vitello doesn't intend to use the notes as past recollection recorded where he is testifying from the notes.

The Court: Of course, he has had all evening to refresh his recollection, so that maybe he could possibly testify without the notes, but I agree that the authority which you have cited and which I have investigated myself, is correct.

Mr. Bouchard: When I did take a look at it in Mr. Tracy's handbook on evidence, he agrees with Wigmore.

The Court: All right, we will proceed.

Mr. Sullivan: Mr. Vitello, please. [120]

Whereupon,

## CHARLES VITELLO

called as a witness for and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

# Direct Examination (Continued)

By Mr. Sullivan:

- Q. In the course of the proceeding yesterday, Mr. Vitello, I believe you were testifying as to the first time you contacted Mr. Baumgardner?
  - A. That is right.
- Q. And the next question was, if I remember correctly, what else did Mr. Baumgardner tell you during this interview?
- A. I asked Mr. Baumgarden about how much he spent for living expenses and he said he spent about \$4,500.00 a year from 1945 to date.
  - Q. Did he go back from 1945?
- A. No, we did not go back from 1945. At that particular conference, well, he called his wife and told her I was going up to pick up some records but after I got done with the conference with Mr. Baumgardner, I went to his house and saw Mrs. Baumgardner and she gave me her retained copy of the 1942, 1944 and 1951 income tax returns.

She also gave me some of their personal checks and I believe it was for 1951 and 1952. She said the checks prior [121] to that had been destroyed. I asked her if she did not mind, if she would not

mind making another search for them for the next time I contacted her so that she would be able to say definitely if they were available. She said that she would.

Then she said she had the income records for Milady's Dress Shop, so she got into her Pontiac and I followed her down in my car and she gave me the records for her business, Milady's Style Shop and then I left her and I presume that she went home.

Q. When did you next see the taxpayers?

A. I next saw Mrs. Baumgardner on September 5, 1952, and I asked her at that time if she had looked for prior tax returns and records. She said that she had but was unable to locate any more.

At that time we talked about some other property they had. She mentioned that they only bought a small amount of War Bonds, \$800.00 or \$900.00 during the war years. She mentioned that—the places where they had bought some of their automobiles.

Mrs. Baumgardner said that she had a third year high school education and that the only income job she ever had was in the operations of Milady's Style Shop and she operated that on a "dare" from her husband, who said that she could not operate a business profitably. [122]

She said she discussed her budget with her husband and they came out with a figure of about \$5,000.00 a year. I asked her how much she spent for food and Mrs. Baumgardner said they spent about \$100.00 a month from 1945 to date. I asked her

about utilities. She said she spent \$15.00 for two months for light, \$6.00 a month for water, \$8.00 a month for gas, and telephone \$8.00 a month. She said her dry cleaning bill was as large as \$100.00 a month, but currently was running about \$35.00 a month.

She said that she had domestic help once a week. Her clothes amounted to \$25.00 a month and that Mr. Baumgardner paid approximately \$100.00 a month in—

- Q. Are you sure that dry cleaning bill was \$100.00 a month; that seems quite high?
- A. That is what she said. Perhaps she was talking about the time——

Mr. Bouchard: Just a moment, not "perhaps." The Witness: That is what my notes show, laundry and dry cleaning \$100.00 a month. I asked her if she had credit accounts and she said periodically. I asked her with which companies and she said J. B. Fitch, the May Company.

About automobiles, she said that they averaged about \$15.00 per month per car, contributions \$500.00 a year. I asked about vacation and travel and she said that the first time they had a vacation was in 1952. I asked her about insurance [123] expenses and she showed me a number of insurance policies from John Hancock, Prudential.

I asked her about social dues and she mentioned it cost her about \$16.00 a year. I asked her if she had received any gifts and she said no, she had received no major gifts, neither as donee or donor.

She said that they never filed any financial statement, at least she said that she never filed any financial statement and she said she never saw any large amounts of cash, except pocket money, and then she showed me a bunch of insurance policies—

The Court: You mean other than life insurance? The Witness: No, these are all life insurance and automobile insurance. Then she showed me a number of Trust Deeds on real estate property wherein the Baumgardners were named as the payee. She showed me some stock certificates from Northrup Aircraft and Kilburn Manufacturing Company.

She mentioned that she had no private accounts receivable, no annuities. Her jewelry was minor, just one ring worth about \$500.00 which she had gotten about ten years ago. She had no furs. Her liabilities consisted of real estate liability of Coast or Great Western Savings, no other liability, no other private loans, excepting real estate loans with the Bank of America.

And then she said that she incurred some expenses for [124] music lessons for her children. That was the substance of that conversation.

- Q. (By Mr. Sullivan): When did you next have a conversation with either of the Petitioners?
- A. On November 6, 1952, Mr. and Mrs. Baumgardner were in the Hawthorne police station.

Mr. Bouchard: What is that date?

The Witness: November 6, 1952.

The Witness: And special agent Clarence Turner was with me at this conference.

Q. (By Mr. Sullivan): Did you have a conversation with the Petitioners at this conference?

A. Yes, we discussed some of the real estate transactions. We discussed the commission income account that was reported in 1947, 1948 and 1949 return, and Mr. Baumgardner said some of the commission was derived from the buying and selling of Hawthorne City Bonds, and he could not suggest any way of verifying the transaction.

He had no records. He said that he was permitted to buy Hawthorne City Bonds for an amount, a nominal amount. The remainder of the commission was income which was derived from private investigations about which he could not give any details because if it became known he would lose his job and he [125] said that although he trusted me, he was sure that there was a leak in the Internal Revenue service since his income tax matters were introduced by his opposition during litigation.

Mr. Baumgardner said that the title to the property on 611 Truto Avenue, Hawthorne, California, was taken in his father's and mother's names, but he and Mrs. Baumgardner actually owned the property.

Mr. and Mrs. Baumgardner both stated that they did not inherit any money, any bonds, receive any gifts or any money from anyone except for Trust Deeds to acquire real estate.

We reviewed a schedule of living expenses that I had prepared from information supplied by Mrs. Baumgardner and I advised Mr. Baumgardner that these were prepared mainly from the information supplied by Mrs. Baumgardner.

Q. May I have—strike that.

Mr. Sullivan: Will you please have this marked for identification as Respondent's Exhibit next in order for identification?

The Clerk: LL for identification.

(The document above referred to was marked Respondent's Exhibit LL for identification.)

Q. (By Mr. Sullivan): I show you Respondent's Exhibit LL for identification and ask you if that is the document you are referring to? [126]

A. Yes, sir. This is the document I used in discussing with Mr. and Mrs. Baumgardner that the figures for living expenses on Exhibit LL were primarily figures supplied by Mrs. Baumgardner and that Mr. Baumgardner again said that the estimated living expenses were about \$4,500.00 a year up, \$4,500.00 to \$5,000.00, inclusive, for the years 1945 to 1951, and that that figure included Federal taxes.

I asked them if they could suggest any other expenses and they said they could not and Mr. Baumgardner remarked that, as a result of my questioning, he and his wife reviewed their budget and it came out to about \$5,000.00 a year.

Then we talked about another schedule that I had prepared, schedule of assets and liabilities for Mr. and Mrs. Baumgardner.

Q. May I have that, please? A. Yes.

Mr. Sullivan: May I have this marked as Respondent's Exhibit next in order for identification?

The Clerk: MM for identification.

(The document above referred to was marked Respondent's Exhibit MM for identification.)

Mr. Sullivan: At this time, your Honor, I would like to offer Exhibit LL for identification into evidence.

Mr. Bouchard: No objection. [127]

The Court: It is admitted.

(The document heretofore marked Respondent's Exhibit LL was received in evidence.)

Mr. Bouchard: Off the record.

The Court: Off the record.

(Discussion outside the record.)

The Court: Back on the record, please.

Q. (By Mr. Sullivan): I show you Respondent's Exhibit marked MM for identification and ask you if that is the document you are referring to?

A. Yes, sir, it is.

Q. Would you continue, Mr. Vitello?

A. I advised Mr. and Mrs. Baumgardner that the figures and items shown thereon resulted from my work and that in my files I had documents to show them, from which I derived these figures.

The first item on the schedule is cash in pocket and I told both Mr. and Mrs. Baumgardner that they had individually and at different times, stated that the only cash they had was a small amount of \$100.00 cash in pocket and for that reason, I put the \$100.00 figure in there.

Mr. Baumgardner said that that wasn't correct because he had some \$8,000.00 to \$10,000.00 in cash which he kept under the rugs in different corners. That he had some [128] money when he came to California from Oklahoma; that he added to it gradually.

Q. Did he say how much?

A. Not at this time. He said he could not recall how much he had when he got married. His wife could not recall either. That, he did not recall. Nor did he recall how much he had on any particular date; that no one else knew about it and that as of that date, November 6, 1952, he had between \$500—between \$400.00 and \$500.00 in cash under a rug.

He said that the largest amount of cash was between \$15,000.00 to \$16,000.00; that he had about \$18,000.00 at about the time he started to build some rental units on West 132nd Street, in Hawthorne.

Q. Did he say at what date he had this \$16,-000.00, Mr. Vitello?

A. No, he could not pinpoint as to the date. He said at the time he started to build some rental units on West 132nd Street in 1949 or 1950, with reference to the \$18,000.00, he had \$18,000.00. He

said that when friends would ask him for a loan of \$300.00 to \$400.00, he would do so from his cash under the corners of the rugs; that the money was kept under the rugs; \$20.00 bills under one corner, \$50.00 bills under another corner and so forth.

Each of the figures were reviewed. I read the figures [129] to the taxpayers in the hundreds and they said that they were substantially correct.

Mr. Baumgardner said that the figure for 391 Cedar Avenue was incorrect and that it wasn't \$6,500.00 but closer to \$3,500.00 and that in 1950 and 1951 tax returns were incorrect in listing the amount at \$6,500.00. Mr. Baumgardner further explained that Mr. Mann borrowed \$3,000.00 from him and repaid a portion of it and the balance was handled through the sale of a piece of property and they agreed that the figure I had on the schedule for that piece of property was about correct, \$4,922.00.

Q. Is that the substance of your conversation on November 6th?

A. No, we talked about others. I told Mr. Baumgardner that I found a savings bank account in the Bank of America, No. 3859 and Mr. Baumgardner remarked that it was a good thing that the Los Angeles Grand Jury did not find out about that account, since he failed to tell them about it and they would probably have accused him of perjury even although the amount was only \$55.00.

They mentioned that they had War Bonds in the safe deposit box. Then I told Mr. and Mrs. Baumgardner that I had planned to type up the schedule

of assets and liabilities and living expenses and present them to them for their signature.

Mrs. Baumgardner objected because she said that she [130] wasn't familiar with all the details. I told her the signing of the statements would only indicate that at the time the statements were correct to the best of her knowledge and belief and that it did not preclude subsequent corrections.

Mr. Baumgardner agreed and said that he would sign that if his attorney approved, and he further explained that he had discussed the matter with his attorney and his attorney advised him not to sign any statements until he had an opportunity to review them.

Mr. and Mrs. Baumgardner were asked individually if there were any additional assets of liabilities and their answer was "no." I explained to him that these statements would only serve as a basis for whatever actions followed relative to their tax liability. I pointed out to them that neither Mr. or Mrs. Baumgardner was required to sign any statement. In fact, they did not even have to discuss anything with the Government and that they could refuse to talk with us.

Mr. Baumgardner stated that the returns might have some inaccuracies when I told him that the interest income was omitted, but he said that he did not intend to defraud the Government and that he was willing to pay whatever additional tax was determined to be due.

Mr. Baumgardner then asked if he would receive a clearance from the Internal Revenue service after this investigation [131] was over. I told him the investigation was not the routine investigation and for that reason the period ending 12-31-51, was being examined, so that the Government would not, within a short time, have to conduct another investigation.

Mr. Baumgarden said that he was tired of being investigated as a result of information supplied by his political opponents. Permission was granted to inventory their safe deposit box and Mrs. Baumgardner, Mr. Turner and I went to the Bank of America where we inventoried the safe deposit box.

- Q. What did you find there, Mr. Vitello?
- A. Principally about \$1,000.00 in War Bonds.
- Q. I am a little concerned, you might leave a wrong impression with reference to the Grand Jury matter. Mr. Baumgardner, to your knowledge, was never indicted by any County Grand Jury, was he?
  - A. No.
- Q. Do you recall having another conversation with these taxpayers after November 6, 1952?
  - A. Yes, on January 2, 1953.
  - Q. And what transpired at this time?
- A. I talked to Mrs. Baumgardner and I had previously borrowed a 1951 income tax return, her retained copy, and I went up for the purpose of returning it so that they could get ready to prepare their 1952 return.

- Q. You talked only with Mrs. Baumgardner then? [132]
  - A. Only with Mrs. Baumgardner.
  - Q. Mr. Baumgardner wasn't there?
- A. Mr. Baumgardner wasn't there. And this was in the church. I told Mrs. Baumgardner that George Bouchard, attorney, and Mr. Baumgardner wanted me to send him a copy of the financial statement so that he and Mr. Baumgardner could discuss the statements. However, I told Mrs. Baumgardner that I felt these statements were results of my work and without the signatures of Mr. and Mrs. Baumgardner, I did not think it would be fair for me to turn over the results of my work to their attorney, at least without me being present.

Mr. Bouchard refused to discuss the items on the financial statement with Mr. Baumgardner in my presence.

- Q. Is that all that transpired there?
- A. No, I also told Mrs. Baumgardner that prior to the time that Mr. Bouchard came into the picture, I felt free to discuss any matter which came up with Mr. Baumgardner or with her, but now I felt that Mr. Bouchard had all the arrangements and I told her I would have to get any information from the sources that were available to me.

Mrs. Baumgardner said that she was hesitant to sign the financial statements herself because many of the transactions she heard of for the first time when we discussed the items at the Hawthorne police station with her and her husband. [133]

She also said particularly the cash explanation of \$18,000.00, that Mr. Baumgardner made. She said she never knew of it before, that she never saw the money. In fact, she doesn't believe her husband was telling the truth about the cash.

To her knowledge, the largest amount of cash that she knew of at one time was about \$1,000.00 but never any amount as large as \$18,000.00. I pointed out a few differences in figures with relation to the cost of 391 Cedar being \$4,922.00 instead of the amount they listed of \$3,750.00 in the tax return and the cost of 443 East 129th Street being the correct figure of \$3,750.00 instead of \$6,500.00 on their 1951 return.

I also suggested that they include all their Trust Deed interest on their 1952 return. Mrs. Baumgardner stated that her husband did considerable gambling, but she did not know all the details. That was the substance of that conversation.

- Q. After January 2, 1953, did you have occasion to see either of the Petitioners again?
- A. Yes, in the latter part of January, 1953, I had occasion to talk with Mr. Baumgardner in the City Hall. However, we did not discuss business or anything relating to his tax liability.
- Q. And after that did you see either of the Petitioners [134] again?
- A. Yes, on February 26, 1953. Internal Revenue agent William Kinsella served Mr. Baumgardner with a letter relative to the requirement of the keeping of records at the Hawthorne police station.

Q. What was the substance of that conversation, Mr. Vitello?

A. Mr. Kinsella served Mr. Baumgardner with a letter relative to the requirement of keeping records. Mr. Baumgardner said that his attorney, George Bouchard, did not want him to sign waiver forms 872 for the year 1949. I told him since the matter was only a civil problem that I would leave the waivers with him and leave a return envelope so that if he and Mrs. Baumgardner should decide to sign the documents, he could forward them to the Government.

I told Mr. Baumgardner that this was my first experience where an attorney refused to sign a waiver relating to a civil matter and that the Government would be obliged to take what necessary action they would have to if they did not get the forms in, in time.

We showed Mr. Baumgardner the information that we had with relation to the cost of the property at 391 Cedar Avenue in Hawthorne. Mr. Mann gave us information about the \$3,000.00 loan that Mr. Baumgardner made to him in 1947 and that repayments of \$100.85 on a monthly basis were made by Mr. [135] Mann to Mr. Baumgardner and that the outstanding balance of the loan of \$1,-399.46 was applied to the purchase of a house and that the correct cost of the house should have been \$4,922.00 instead of \$6,500.00 on their return.

Mr. Baumgardner said he purchased a 1940 Oldsmobile in 1940 for \$1,240.00 and that it was wrecked

(Testimony of Charles Vitello.) in 1946 and that he purchased a 1946 Oldsmobile thereafter.

I asked Mr. Baumgardner if he had any interest in the Cockatoo, which was owned by Andrew Lococo——

The Court: Interest in what, Mr. Vitello?

The Witness: In the Cockatoo Cafe owned by Andrew Lococo and Mr. Baumgardner said that he had no interest in the business or in any other property not already discussed. We advised—I told Mr. Baumgardner that our information showed that he had an interest in the Embassy Club, a poker club in Gardena, California, and we suggested to him that he report the income from that club properly on his 1952 return and that he should also report the interest dividend, rental and other income on his 1952 tax return.

He said that he would and if necessary, he would ask for an extension of time for filing to be sure that the 1952 return was filed properly.

Then we talked about the Beacon Cafe and Mr. Baumgardner said that any money which was put into the Beacon Cafe was money which belonged to Jim Bruno, who died in 1950. [136] He was a friend of Andy Lococo and came from the same town that Mr. Lococo came from, namely, Milwaukee, Wisconsin.

Mr. Baumgardner said that Mr. Bruno was separated from his wife, who was still living in Milwaukee and that he was now living with a girl

by the name of Ruth—he didn't know her last name.

Mr. Baumgardner said Mr. Bruno had T.B. Mr. Baumgardner said he did not lose one penny in the Beacon Cafe nor did he receive as much as one penny from the Beacon Cafe at any time. He handled the money for Mr. Bruno and that it was all Mr. Bruno's money and that none was his.

He said that Clyde Walker did not know of Mr. Bruno's interest. He said he led Mr. Walker to believe that he was the interested party because he did not trust Mr. Walker.

Mr. Baumgardner said he had rotary dues of \$8.00 a month and dues for the Eagles of \$14.00 a year. Mr. Baumgardner said that bookmakers were arrested at the Beacon Cafe when Andy Lococo was operating the place, but that he could not remember the last name. He said the Los Angeles County Sheriff's office made the arrest because he was too well known. However, he co-operated with the Sheriff's office.

Mr. Baumgardner said his clothes were given to him by friends and acquaintances. Mr. Baumgardner said he could come to our office any morning except Tuesday, subject to his [137] attorney's approval. That was the substance of that conversation.

Q. Mr. Vitello, did you conduct an investigation into the—to determine the cash on hand that Mr. Baumgardner had at any time?

A. Yes. First of all I went to the Bank of

America and I transcribed all of Mr. Baumgardner's accounts that I could find. This was the Bank of America in Hawthorne and I made a partial transcript of the early years but I made a more complete transcript of the more current years.

Mr. Sullivan: Will you mark this as Respondent's Exhibit next in order for identification? The Clerk: NN for identification.

(The document above referred to was marked Respondent's Exhibit NN for identification.)

Q. (By Mr. Sullivan): I show you Respondent's Exhibit NN for identification and ask you if that is the document which you have just referred to? A. Yes, sir, it is.

Q. Is that a true transcript of the bank's records, Mr. Vitello?

A. It is a partial transcript of the bank's records. It isn't complete in that I did not list all the details. For [138] example, for some check items I put down twelve checks at less than \$100.00. The deposits are complete and the balances are correct. It is just the check items where I have ten checks of less than \$100.00 for a month.

Q. In those cases you did not list each check?

That is right.

Mr. Sullivan: At this time, your Honor, I would like to offer Respondent's Exhibits MM and NN for identification into evidence.

Mr. Bouchard: Well, your Honor wonders why I don't object but it was part of the stipulation that I agreed to counsel's statement that the bank records for this period had been destroyed. I how-

ever would stipulate that they had been destroyed but I object to it on the ground, of the witness' testimony that it is only a partial and not a complete record.

The Court: But I suppose the important parts of it are the totals which are included?

The Witness: Yes.

Mr. Bouchard: I suppose the important part of it, from the Government's point of view is, but I don't know what else was in the record which would have been of value to the Petitioner, as it is a partial record.

The Court: Your objection is overruled. It will be admitted. [139]

(The document heretofore marked Respondent's Exhibits MM and NN, respectively, were received in evidence.)

The Witness: In addition to making a transcript of the taxpayers' yearly bank account, I examined all of the loan records in the Bank of America relating to the taxpayers and I made a transcript and obtained photostats of the loans and how they were paid.

I made a transcript of the mortgages on the Trust Deeds and the payments that were made by the taxpayer.

Q. (By Mr. Sullivan): Where did you make this?

A. At the Bank of America and there was one entry, Syndicate Mortgage Company on Wilshire

Boulevard, Los Angeles. Outside of that, except for the discussions with Mr. and Mrs. Baumgardner about cash on hand, that was the major portion of what I did to establish the cash on hand.

I examined Mr. Baumgardner's earlier tax filing records to see what tax returns he filed for the period of 1930 through 1951. I cannot think of anything else that might relate to that question.

- Q. In the course of your investigation, Mr. Vitello, did you investigate the leads that were given to you by Mr. Baumgardner as to the ownership of the Beacon Cafe?
- A. Yes, I did. I examined all the escrows, Majorell's [140] escrow and the escrows at the Bank of America and I read through each document which was in the file to find out if I could find any reference to James Bruno. I could find no reference to James Bruno in the escrow by Majorell. I could find no reference to James Bruno in the two escrows at the Bank of America.

I examined the liquor licenses and I could find no reference to James Bruno, in any of the liquor licenses.

I examined the property files of the Los Angeles County, California, and the files of the undertakers who buried Mr. Bruno. I examined the income tax return files in the Commissioner's office for Mr. Bruno and I could find no connection between Mr. Bruno and the Beacon Cafe.

Q. In the course of your investigation, Mr.

Vitello, did you investigate any other leads that the taxpayer might have given you as to cash on hand or beginning net worth?

A. Yes, sir, I went to the City Hall for the City of Hawthorne and I examined the payroll records relating to Mr. Baumgardner and picked out those items that related to Mr. Baumgardner, both as to his wages and as to expenses from 1925 to 1951, inclusive.

I also examined all of the bond records that the City of Hawthorne had, looking for the taxpayers' names or names of their children and I could find none.

I examined the sale of lots which had a tax lien [141] against them, for the taxpayer's name and I could find no sale of lots in the names of the taxpayers or their children.

I examined the Grantor indices for the Los Angeles County. I examined the grantee indices. I examined all the deeds that were recorded for the years 1935 through 1951, inclusive.

I examined all the Trust Deeds. I examined the transcript of a civil file involving Mr. Baumgardner. I examined the prior income tax returns. I examined all the bank records of the Bank of America in Hawthorne for Mr. and Mrs. Baumgardner including loan file, credit files, escrows, ledger sheets, their savings and commercial accounts, all deposit tickets.

Q. Did you find anything that isn't reflected on Exhibit 1-A in evidence in this case?

- A. No, everything I could find is shown there.
- Q. Did you find any evidence that Mr. Baumgardner dealt in large cash figures? A. No.

Mr. Sullivan: That is all, Mr. Vitello, thank you.

Mr. Bouchard: Can we take a recess?

The Court: Well, it is all right with me.

(Short recess taken.)

The Clerk: The Court is in session, [142] gentlemen.

#### **Cross-Examination**

By Mr. Bouchard:

- Q. Mr. Vitello, you are a special agent of the Bureau of Internal Revenue, are you?
  - A. Yes.
  - Q. What are your duties as such?
- A. To make tax investigations, accumulate evidence to support civil fraud, criminal fraud, write reports.
- Q. Isn't one of your duties also to determine when a case is assigned to you for such an investigation that the facts justify that there should be a recommendation of no fraud or no criminal fraud?
  - A. Yes, sir.
    - Q. Is that part of your job? A. Yes.
- Q. You have nothing to do with the determining of the income tax liabilities of a taxpayer that you are investigating, do you? A. Yes, I do.
- Q. Is it part of your duty as a special agent to determine the propriety of deductions, for example?

- A. We usually have an Internal Revenue agent with us.
- Q. It is the duty of the Revenue Agent to determine the tax liability, isn't it?
  - A. Generally, that is right. [143]
- Q. If items of income or items of deductions are involved which your investigation leads you to believe has resulted in the fraud, or wilful evasion of tax, that is where your duties really begin?
  - A. That is right.
- Q. It is the Revenue Agent who determines the civil liability of what the tax should be; that is true, is it not?

  A. That is true.
- Q. Now, when did you start—first, you have been testifying to some memoranda that is before you?
  - A. Yes, sir.
  - Q. May I see your memorandum?
  - A. All of them?
  - Q. Yes, I want them all. A. All right.
- Q. Are the documents which you have handed me the documents that you have used in testifying?
  - A. That is right, sir.
  - Q. And when were they prepared?
  - A. At the time of the interview.
- Q. When did you start your investigation of this case, Mr. Vitello?
- A. It was assigned to me in April of 1952. However, I did not contact Mr. Baumgardner until August of 1952. I had [144] some preliminary field work prior to contacting Mr. Baumgardner.

- Q. What did that field work consist of your doing?
- A. I checked the public records, the grantee and grantor lists, checked back against escrow records, loan records, cashier's checks.
  - Q. Anything else?
  - A. And talked to a number of people.
  - Q. Who did you talk to?
- A. The buyers and sellers of property, people who had Trust Deeds, how they were paid, officials at the Bank of America at Hawthorne. I think that covers about most of them.
- Q. So at the time you first contacted the Baumgardners you had made a pretty thorough investigation of matters that were of public record, is that so?
  - A. Yes, sir.
- Q. And had you seen their transactions at the bank? A. Yes, sir.
  - Q. How long a time did it take you to do that?
- A. I don't know, three, four or five days, I don't know.
- Q. Did you check the Probate files of Los Angles, Mr. Vitello?
- Λ. Yes, sir, I did for the years 1935 to [145] 1951.
  - Q. For what purpose?
- A. To determine if the Baumgardners had inherited any money and to determine if Bruno left any estate.
  - Q. Now, with respect to Mr. Baumgardner, in

(Testimony of Charles Vitello.) determining how he might have inherited any money, how did you do that, Mr. Vitello?

- A. I went over the probate files on the third floor of the Hall of Records and I looked up all the estates in the name of Baumgardner. I looked for that name but I could find none.
- Q. So, as far as the probate file showed, Mr. Baumgardner did not receive anything from anybody by the name of Baumgardner, is that right?
- A. That is right. He also told me he did not receive any inheritance.
- Q. I am talking about the investigation that you made of the public records. A. Oh.
- Q. Did you try to make a search in the probate office for beneficiaries by the name of Baumgardner?
- A. What is that probate index book that you look through? If it is that, then I did. If it isn't, then I did not.
- Q. I was going to ask you how you did it. That was for my personal information. I just wondered how you located [146] beneficiaries in the probate office.
- A. You would have to get it from some place, of course.
- Q. Now, you first contacted the Baumgardners—when did you say? A. August of 1952.
- Q. Now, are these documents which you have handed me, Mr. Vitello, all of the documents that you have had before you while you were testifying on direct examination?

- A. Well, I have these other files but I didn't refer to them.
  - Q. You did not refer to them?
  - A. No, sir. They refer to a list of exhibits.
- Q. Where did you first contact Mr. Baumgardner?

  A. At the Hawthorne police station.
- Q. And what did you say to him and what did he say to you?
- A. I showed him my credentials and identified myself and told him that I had his tax returns assigned to me for examination.
- Q. And did you tell him what your duties as a special agent were?

  A. No, sir.
  - Q. Why did you emphasize the "No, sir"?
  - A. For no particular reason. [147]
  - Q. Pardon?
  - A. Just, no, sir, with no accent.
- Q. Were you afraid to tell him what your particular duty was in connection with the matter?
  - A. No.
- Q. Why didn't you tell him what your duties were, Mr. Vitello?
- A. Mr. Baumgardner is a police officer. He said that he had had occasion to talk with Internal Revenue employees before and I was under the impression that he knew what a special agent's job was.
- Q. Well, when you investigate a taxpayer when he isn't a police officer and doesn't have any prior experience, do you tell him what your duties are?

- A. Not until I am convinced that the taxpayer is guilty of tax evasion.
- Q. Didn't you, at your first meeting with Mr. Baumgardner, tell him you were just making a routine audit of his returns?

  A. No, sir.
- Q. Did you, at that meeting, discuss with Mr. Baumgardner some of the matters you had learned about in your investigation prior to seeing him?
  - A. No, sir, I did not.
- Q. You did not tell him that you had talked to the [148] officials of the bank and that you had seen the transcript of his records?

  A. No, sir.
- Q. You did not tell him that you had examined the public files of the Los Angeles County?
  - A. No. sir.
  - Q. Or anything of that sort? A. No, sir.
  - Q. What did you ask about?
- A. I wanted his explanation as to who prepared his tax returns and what information he gave the accountant. I wanted to find out his explanation as to why he did not keep records.

Do you want me to repeat the subject we have just talked about?

- Q. Yes.
- A. That is going to be rather difficult without the notes.
- Q. Well, I have got the notes. Now, you go ahead, Mr. Vitello.
- A. I showed him the returns that I had in my possession and I asked him to identify his signature

(Testimony of Charles Vitello.) on the returns and he acknowledged that they were the returns for himself and his wife.

- Q. Right there, let me interrupt you. [149]
- A. Yes, sir.
- Q. You had with you, as I understood your testimony, the original returns for 1946, 1947, 1948, 1949 and 1950; is that right? A. Yes.
- Q. Your assignment was to investigate these returns for the period 1942 to 1951; is that right?
  - A. I don't recall what my first assignment was.
  - Q. Well, were those prior years 1942 to 1946——
  - A. Subsequently they were.
  - Q. They were subsequently assigned to you?
  - A. Yes.
- Q. Did you ask Mr. Baumgardner—strike that out. There has been offered in evidence by stipulation, copies of the returns that you got from Mr. Baumgardner for the years 1942 and 1944, is that correct? A. And 1951.
  - Q. And 1951? A. Yes, that is right.
  - Q. Why did you ask for copies of his returns?
- A. Because the Government had destroyed the early returns.
  - Q. You did not have the originals?
  - A. That is right.
- Q. Why did you ask for the copy of his 1951 return, Mr. [150] Vitello?
- A. I wanted to see what kind of income he had reported.
- Q. Didn't you have the original return of the Government?

  A. No, sir.

- Q. You did not have it? A. No, sir.
- Q. It had been filed, hadn't it?
- A. Yes, sir, the records show that they were filed at the time.
- Q. Now, Mr. Baumgardner willingly gave you his retained copy of the 1942 and 1944 returns?
  - A. Mrs. Baumgardner, ves.
  - Q. You first saw him at the police station?
- A. Yes.
- Q. You asked him for quite a few records, did you not?
  - A. Yes, all records that he might have.
  - Q. And he willingly gave them to you?
  - A. Yes.
- Q. And he told you that they were at the house and if you went down, Mrs. Baumgardner would give them to you, is that right? A. Yes.
- Q. And among the other records—strike that out. So Mrs. Baumgardner gave you everything she had, did she, Mr. [151] Vitello?
- A. I presume she did.
- Q. And very willingly she gave them to you, did she not? A. That was my impression.
- Q. Now, did you examine the safety deposit box of the Baumgardners?
  - A. Yes, sir, we did.
  - Q. Who do you mean by "we"?
- A. Special agent Clarence Turner was with me at the time.
  - Q. How did you get into the box?
  - A. After we finished talking to Mr. Baumgard-

ner and Mrs Baumgardner in November, 1952, I asked Mr. Baumgardner for permission to inventory the safe deposit box and he said, "Sure, go right ahead."

- Q. He permitted you to do that?
- A. Yes, so Mrs. Baumgardner, Mr. Turner and myself went to the box.
- Q. Was that on the occasion when you and Mr. Turner saw Mr. Baumgardner at the police station?
  - A. Yes, sir.
- Q. I think you testified that—was that on the—that was the meeting of November 6, 1952, when you and Mr. Turner saw the Baumgardners in Hawthorne, is that right? [152]
  - A. That is right.
- Q. And that is the time that you asked for permission to examine their safe deposit box?
  - A. Yes.
  - Q. And they willingly gave it to you?
  - A. Yes.
- Q. And that is the same occasion on which you testified that you told Mr. Baumgardner that it was no longer a routine investigation?
  - A. That is right.
- Q. Now, at the conclusion of your investigation, Mr. Vitello, did you recommend criminal prosecution? A. Yes, I did.
- Q. And as a result of your recommendation, Mr. Baumgardner was indicted at the United States District Court for the Southern District of Cali-

fornia, being charged with filing false and fraudulent tax returns for the years 1947 to 1951, was he not?

A. Yes, sir.

- A. Yes, sir.
- Q. And about June or July of 1954, that case was brought to trial before a Jury, was it not?
  - A. Yes, sir.
  - Q. And you testified in that case, did you not?
  - A. Yes, sir.
- Q. And the witnesses produced here yesterday—Mr. Adams [153] testified, did he not?
  - A. Yes, sir.
- Q. And the Phyllis Miller that he referred to yesterday also testified, did she not?
  - A. Yes, sir.
- Q. Have you seen any transcript of the testimony which you gave in the criminal trial?
  - A. I believe I read it in a cursory manner once.
- Q. Did you do it recently in connection with your preparation to testify here?
- A. No, I would not say that. I don't recall whether I did it in June or more recently. I cannot specifically say.
- Q. Do you recall that you were asked this question:
- "Q. Would you please relate to us the substance of the conversations in that August 11, 1952, conference?
- "A. I have some pencil notes that I made at the time. Occasionally I am going to have to refer to them. At that time I told Mr. Baumgardner that I had been assigned his income tax returns for in-

vestigation and I asked him for his books and records. He said he had none. He said he never kept any for himself. However, his wife had a [154] business called Milady's Style Shop and Irene Strewn kept the books and records for that enterprise. He said that his accountant was R. P. Ludolph who lived close by to the police station. He submitted—Mr. Baumgardner submitted figures to him each year for the preparation of his income tax return. I asked him if he had any record of his commission income. He said no, he had no record of his commission income.

"I asked him what was the source of it. He said they were private investigations."

Do you remember that? A. Yes.

- Q. Now, you testified that on January 2, 1953, you talked to Mrs. Baumgardner and at that time you presented to her the financial statements that you had prepared, is that correct?

  A. No, no.
  - Q. What is correct?
- A. I returned to her at that time the 1951 copy that they permitted me to use. That was all I returned at that time.
- Q. Well, was there any conversation with Mrs. Baumgardner at that time about any subject relating to this case? [155] A. Yes, sir.
  - Q. What was that conversation?
- A. I told her that I was anxious to get their signatures on the financial statements and Mrs. Baumgardner said that she hesitated to do so because many of the net worth—she never heard of it

before. It was the first time she had ever heard of them when we discussed them several months before. I told her that prior to the time that Mr. Bouchard had been engaged in the case, I felt free to talk to Mr. and Mrs. Baumgardner freely and that subsequently, I would have to get whatever information I had to get from the sources that were available to me.

- Q. What else was said?
- A. I asked Mrs. Baumgardner what she knew about Mr. Baumgardner's cash explanation and she said that she did not think her husband was telling the truth, because she never saw any large amounts of cash, certainly never as much as \$18,000.00, maybe \$1,000.00 but not such a large amount as \$18,000.00.
- Q. So you were sure that Mrs. Baumgardner told you on that occasion that her husband must have been lying?

  A. That is right.
  - Q. You are positive of this? A. Positive.
- Q. And that was after you had told both Mr. and Mrs. [156] Baumgardner in November that this was no longer a routine investigation, is that correct?

  A. That is right.
- Q. Now, what is that exhibit that you showed Mrs. Baumgardner?
  - A. The financial statement.
  - Q. What is that? A. MM and NN.
- Q. I show you Respondent's Exhibit MM and ask you if that is the schedule of assets and liabilities

which you showed Mrs. Baumgardner on this occasion?

- Λ. I did not show her these schedules in January of 1953. The only time she saw the schedule was on November 6, 1952.
  - Q. She never saw this at this January meeting?
  - A. No, sir.
- Q. Well, you said in this January meeting in 1953, she told you there were a lot of things on the schedule of assets and liabilities that she did not know anything about, is that what she said?
  - A. Yes.
- Q. Did she disclaim any knowledge of a savings account in the Bank of America?
- A. She did not specify any particular asset of liability. [157]
- Q. So you did not go over these separately and she just said she never heard of these things, is that so?
- A. No, she did not say that. She said some of these things she never heard about before.
  - Q. Did she specify what things?
  - A. No, she did not.
- Q. Now, Mr. Vitello, you said something about asking the Baumgardners to sign a statutory waiver—who did you ask?
- A. I know I asked Mr. Baumgardner and I am trying to recall at what conference that took place. I don't remember whether it was the November conference or the February conference. It must have been the November conference. If it was the

November conference then Mrs. Baumgardner was there also.

Mr. Sullivan: Could the witness refer to his notes to clear up his mind on that question?

Mr. Bouchard: No, no, this is cross-examination.

- Q. (By Mr. Bouchard): What kind of a waiver were you asking them to sign?
  - A. A civil tax waiver.
  - Q. A waiver of what?
- A. To extend the statute limitation, the civil statute limitations.
- Q. Had you, at that time, completed your report? [158] A. No.
  - Q. What date did you complete your report?
  - A. Some time in April, 1953, to my recollection.
- Q. I think you testified that they said to you that I was their attorney and I did not approve of their signing that, is that correct?
  - A. That is right.
- Q. Now, you had prepared a net worth statement or a statement of assets and liabilities at that time which you had shown the Baumgardners and asked them to sign?
  - A. That is right, November 6, 1952.
- Q. And they asked you to let them have it so that they could show it to their attorney, did they not?

  A. That is right.
  - Q. And you refused to do that, didn't you?
  - A. Yes, sir.
- Q. Now, it is the practice of a special agent, is it not, to keep very confidential the facts they may

(Testimony of Charles Vitello.) discover in the course of an investigation, isn't that true?

A. Sometimes. Some facts but some they do not. Actually it is as to what they decide is important and what isn't.

Q. What was that answer?

A. It is according to what facts they want to disclose to the taxpayer. [159]

Q. They tell the taxpayer what they want to tell him and that is it, is it?

A. Well, you could put it that way.

Q. Wouldn't that be the truth if you put it that way, Mr. Vitello?

A. In this particular case I had discussed every particular item with the taxpayer.

Q. Then why did you not want to let them have the copy of the financial statement, so that they could show it to me?

A. Because I wanted to be present when we discussed it with you.

Q. Why?

A. And I wanted them to be present, too.

Q. Why?

A. So that I could have a piece of evidence if it later became necessary to use it.

Q. At that stage of the proceeding, did you think you needed evidence?

A. I am always in need of evidence.

Mr. Bouchard: I do not agree.

Q. (By Mr. Bouchard): Now, you say that this is the first time in your experience as a special

agent that you have had an attorney who refused to let his clients sign a waiver of the statute? [160]

- A. The civil statute, yes, sir.
- Q. Don't you know, Mr. Vitello, that the only way that an attorney for the taxpayer can get any information about what the special agent is doing is by requiring him to get his notice of deficiency out within the statutory period? That is the first opportunity he has to know anything about the adjustments that have to be made.
  - A. Well, we told the taxpayers—
  - Q. Answer my question.
  - A. I suppose attorneys do that, I don't know.
- Q. At least you found out one that doesn't, by your testimony.

Now, did you say that Mr. Baumgardner in one of your interviews when you discussed with him the Beacon Cafe, had given you some leads as to where you might go and look to determine the ownership of the Beacon Cafe?

- A. Leads—no, I don't think he gave me any lead. He said that he did not own the Beacon Cafe. He did not suggest where I might go and verify about Mr. Bruno.
- Q. At the time you talked to Mr. Baumgardner about the Beacon Cafe did you see the various escrows that have now been offered in evidence here?

  A. I believe I had.
- Q. Now, in one of these interviews, Mr. Baumgardner told you, did he not, that he had made

(Testimony of Charles Vitello.)
quite a lot of money [161] in buying and selling of
Hawthorne municipal bonds?

- A. The way he put it to me at the time was it was the explanation of the commission income on his 1947, 1948 and 1949 returns.
- Q. You mean he told you that part of his commission income listed in 1947, 1948 and 1942 was the result of some profits made in dealing in Hawthorne municipal bonds?
  - A. And the sale of lots because of tax deficiency.
- Q. Did you make any investigation to determine whether in the years 1947, 1948 and 1942 there was any dealing in municipal bonds?
- A. I searched the Hawthorne records from 1935 through 1951, both records for the sale and purchase of lots and I could not find the taxpayers' names or their childrens' names listed.
- Q. And having examined those records and not having been able to find Mr. Baumgardner's name either as a buyer or seller of those bonds, you concluded that he wasn't telling you the truth about the matter, did you?
- A. Well, I don't know what I concluded. I just did not find any record of it and I did not give him any credit for it.
- Q. Well, if you believed he made this money, you would have given him credit for it?
  - A. Yes.
- Q. So because you did not give him credit for it, you [162] did not believe he was telling the truth?
  - A. I did not give him credit for it, no, sir.

- Q. So you thought he wasn't telling the truth?
- A. I did not give him credit for it.

Mr. Sullivan: I object to this question, your Honor.

The Witness: Well, I don't know.

Mr. Bouchard: All right, all right.

- Q. (By Mr. Bouchard): I have now given you back the documents that you gave me, Mr. Vitello.
  - A. Yes, sir.

Mr. Bouchard: That is all, your Honor.

Mr. Sullivan: Just one more question then.

### Redirect Examination

By Mr. Sullivan:

- Q. Mr. Vitello, you testified on cross-examination that you checked the bond records of the City of Hawthorne for the years 1935 through 1951, inclusive; is that correct for the starting year?
- A. I checked the records for the City of Hawthorne from 1925 to 1951, that is, the disbursal records.
  - Q. I am talking about the bond records.
  - A. That would be the same.
- Q. Then you testified on cross-examination from 1935 to [163] 1951, would that be incorrect?
  - A. That is right.

Q. 1925 would be correct? A. Yes.

Mr. Sullivan: That is all.

Mr. Bouchard: That is all?

Mr. Sullivan: Yes.

Mr. Bouchard: Now, Mr. Sullivan tells me that

that concludes the Respondent's case, is that right?

Mr. Sullivan: Yes, the Respondent rests.

Mr. Bouchard: I have Mrs. Baumgardner who is quite anxious to get away. I wonder if you would give me five or ten minutes with her? It will not take very long with her at all and I am sure ten minutes would be sufficient.

The Court: All right, let me know when you are ready.

Mr. Bouchard: All right.

(Recess taken.)

The Clerk: The Court is in session.

Mr. Bouchard: Mrs. Baumgardner. [164]

Whereupon,

#### PEARL E. BAUMGARDNER

was called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name? The Witness: Pearl E. Baumgardner.

## Direct Examination

By Mr. Bouchard:

- Q. Mrs. Baumgardner, you are one of the taxpayers in this proceeding? A. Yes; I am.
  - Q. Are you acquainted with Mr. Vitello?
  - A. Yes, sir.
  - Q. Did you hear his testimony this morning?
  - A. Part of it.
- Q. Did you hear his testimony to the effect that at a meeting that he had with you in January of

(Testimony of Pearl E. Baumgardner.)
1953, you stated to him that you thought Mr. Baumgardner was lying about some matters?

- A. I heard him say that, yes.
- Q. Is that true?
- A. It is certainly false.
- Q. Did you hear his testimony to the effect that at the same time or if not at that time, on some other occasion, [165] that you told him Mr. Baumgardner was quite a gambler?
  - A. That is false, too.
  - Q. Did you hear his testimony?
- A. No, I did not hear that testimony this morning.
- Q. Well, Mr. Vitello did testify that you had stated to him that Mr. Baumgardner was quite a gambler—did you ever tell him that?
  - A. I did not.
- Q. Did you hear Mr. Vitello's testimony in its entirety during the course of the criminal trial?
  - A. Yes, sir.
- Q. Did you ever hear Mr. Vitello testify to any of these things before?
  - A. Not prior to this morning, he did not, no.
- Q. When were you married, Mrs. Baumgardner? A. 1926.
  - Q. Do you have a family?
  - A. Yes, sir.
  - Q. How many children?
  - A. I have two, a boy 23 and a girl 18.
  - Q. Are they living in Hawthorne?
  - A. Yes.

(Testimony of Pearl E. Baumgardner.)

- Q. Have you lived there all your life in Hawthorne, Mrs. Baumgardner?
  - A. Since 1919. [166]
  - Q. Did you go to school in Hawthorne?
  - A. In Inglewood.
  - Q. You have lived in Hawthorne continuously?
  - A. Yes.
- Q. You heard Mr. Vitello's testimony that he went to your home and asked you for all of the records that you had pertaining to this tax matter?
  - A. Yes.
  - Q. Did you give him all the records you had?
- A. I told him to take what he wanted, that he could have any of it. I did not have anything to hide.
  - Q. Did he take any of these records?
- A. He took everything he wanted. He took them all into the living room, the majority of them.
- Q. Now, in the early years after your marriage, Mr. Baumgardner worked in the fire department, did he not? A. Yes.
  - Q. He would not have gotten a great salary?
  - A. About \$150.00 a month.
- Q. Do you know whether or not Mr. Baumgardner had any money at the time when you and he were married?
- A. I don't know how much but I know he had some.
  - Q. How did you know he had some?
  - A. Well, I wasn't depending on his salary.
  - Q. You were provided money by him from

(Testimony of Pearl E. Baumgardner.) sources other [167] than his income, that is, in excess of the amount he was earning?

A. Yes.

Q. There has been some testimony that—strike that out.

Mr. Vitello testified to an occasion when he met you at some church in Hawthorne, do you recall that, Mrs. Baumgardner?

A. Yes, I do.

Q. What was the occasion for that meeting?

A. Well, I really don't know what the specific occasion was. He came to the church twice while I was there.

Q. What church was it?

A. The Baptist.

Q. Were you a member of that church?

A. Yes.

Q. Is Mr. Baumgardner a member of that church? A. Yes.

Q. Was he active in church affairs?

A. Yes, at that time. He was president of the Mens' Brotherhood of the church.

Q. Did you, at either of the meetings in the church with Mr. Vitello, give him any books or records or documents pertaining to this matter?

A. Not at the church. I did not have occasion to have [168] the books over there.

Q. Do you know whether or not in any period in the thirties or the forties, if Mr. Baumgardner kept any amounts of money at home?

A. Yes.

Q. Do you know how much he kept there?

A. No.

(Testimony of Pearl E. Baumgardner.)

- Q. Do you know whether it was much or little?
- A. Well, I think sometimes he had quite a little bit.
  - Q. Do you know where he kept it?
  - A. Well, yes.
  - Q. Well, where?
  - A. Well, behind pictures and under the rug.
- Q. Now, do you remember any occasion of any substantial amount of money being taken from under this rug?
- A. Well, one occasion was when some friends of ours, whom we ran around and went to school with, she was expecting her baby and I believe it happened on a Sunday and Johnny came to our house on the Sunday morning and asked Jack if he could loan him any money for the hospital and he would give it back to him as soon as he could get to the bank, and I believe at that time, that Jack took it out from under the rug because it has always been a joke with these people and ourselves that, "If you want any money you can always get it under the rug in Jack's house." [169]

Mr. Sullivan: Can this be ascertained as to the time?

Mr. Bouchard: You can cross-examine on it.

Mr. Sullivan: Well, this is after the years in question and not relevant.

Mr. Bouchard: Well, that is all the examination. This is the end of it. That is all.

# (Testimony of Pearl E. Baumgardner.)

## Cross-Examination

## By Mr. Bouchard:

- Q. Mrs. Baumgardner, can you set about the time?

  A. This was when——
- Q. That is the time when you saw your husband take the money out from under the rug?
  - A. It was in 1932.
  - Q. 1932? A. Yes.
- Q. You have no idea, you say, how much money there was, Mrs. Baumgardner?
  - A. I have no idea at all.
  - Q. Where were you living in 1932?
- A. On East Delaware where we were living at that time. Now, I think it is about 138th or 139th Street. I don't know which one of the streets it was because the streets were changed but it was on Delaware at the time.
  - Q. How long did you live there? [170]
  - A. Oh, I think about two years.
- Q. Do you know what happened to the money when you moved?
  - A. I assume we took it with us.
  - Q. You don't know? A. No.
  - Q. You did not take it?
  - A. I certainly did not.
- Q. At that time did you clean your own house, Mrs. Baumgardner? A. Yes.
  - Q. Did you clean under the rugs?
  - A. Yes; certainly.

(Testimony of Pearl E. Baumgardner.)

- Q. Did you have occasion to see the money there, Mrs. Baumgardner? A. Yes.
  - Q. And did you count it? A. No, sir.
- Q. What did you do when you cleaned your rugs? A. I cleaned under the rug.
  - Q. What did you do with the money?
- A. I did not even touch it. I never have and I think anyone who knows me would tell you that I have never been the nosey type.
  - Q. Did you not have a vacuum sweeper? [171]
- A. To be honest with you, at that time we did not have a vacuum sweeper.
  - Q. How old are your children?
- A. My son will be twenty-three in May and my daughter is eighteen.
  - Q. They were born in the early thirties?
  - A. My son was born in 1933.
- Q. Did you have this money around the house in 1938 or 1939?
  - A. I couldn't say, I presume so.
  - Q. You could not say? A. No; I could not.
- Q. And your children were young children running around the house in say, 1938 and 1939?
  - A. Most young children run around the house.
  - Q. Weren't you worried about the money then?
- A. No; because I don't know in 1938 or 1939 whether it was there or not. I said 1932.
  - Q. What years did you know it was there?
  - A. 1932.
  - Q. Before that? A. No.
  - Q. After that?

(Testimony of Pearl E. Baumgardner.)

- A. After we moved I don't know.
- Q. All you know is that in 1932 there was some money [172] there? A. Yes.
  - Q. Under the rug?

A. That is right, also in tobacco cans.

Mr. Sullivan: That is all.

Mr. Bouchard: That is all.

Mr. Sullivan: Can we-

Mr. Bouchard: I suppose we can take our noon recess now, your Honor? I think that we can finish this afternoon.

The Court: All right, then, we will recess until 2:00 o'clock.

(Witness excused.)

The Clerk: 2:00 o'clock.

(Whereupon, at 12:20 p.m., a recess was taken until 2:00 p.m. of the same day.) [173]

# Afternoon Recess, 2:00 P.M.

The Clerk: The Court is in session.

Mr. Bouchard: I would like permission, your Honor, to recall Mr. Vitello for about one or two questions.

The Court: Right.

Whereupon,

#### CHARLES VITELLO

called as a witness for and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

# Recross-Examination (Continued)

By Mr. Bouchard:

Q. Mr. Vitello, I show you Respondent's Exhibit 1-A which is a schedule of assets and liabilities as prepared by the Respondent and which has been admitted by stipulation with certain exhibits by the Respondent.

I think you testified this morning that you completed your report on this case in about April of 1953, Mr. Vitello?

A. That is right.

- Q. And that, at the time you completed your report, had you made an investigation of the facts with respect to the ownership of the Beacon Cafe?
  - A. Yes, sir.
- Q. And at the time you completed your reports, you [174] knew all of the facts with respect to the ownership of the Beacon Cafe which you know now; is that correct?

  A. No, sir.
  - Q. You have since discovered some other things?
  - A. Yes, sir.
  - Q. For example?
- A. Mr. Staten originally testified to us that he was the real owner of the Beacon Cafe and subsequently he came in and he changed his explanation

(Testimony of Charles Vitello.)

and said that he was the nominee for Mr. Baumgardner, that Mr. Baumgardner gave him the money to put into the Beacon Cafe.

- Q. Well, then, you have learned that story how recently?
- A. I think it was about three months after I submitted my report.
  - Q. That you learned that? A. That is right.
- Q. Well, now in the criminal trial which has been referred to, the United States versus Baumgardner, you prepared a schedule of assets and liabilities based on the net worth theory, did you not?
  - A. Yes, sir.
- Q. And in the statement of assets and liabilities that was included by you on that occasion, you did not include as an asset any investment in the Beacon Cafe, did you? [175] A. That is right.

Mr. Bouchard: That is all.

Mr. Sullivan: I was going to call Mr. Vitello on rebuttal for one question, and I could ask him that question now.

## Redirect Examination

By Mr. Sullivan:

- Q. Mr. Vitello, you heard Mrs. Baumgardner testify here? A. Yes, sir.
- Q. Did you hear her state that you had not rendered certain statements that you testified to here in the criminal trial? A. Yes.

(Testimony of Charles Vitello.)

- Q. That is in certain conversations with you that you testified to?
- A. I testified to those conversations with Mrs. Baumgardner here but not in the criminal trial statements.
  - Q. Is that true? A. Yes.
  - Q. Why did you-

Mr. Bouchard: Objected to as immaterial.

Mr. Sullivan: Your Honor, there was an inference left at the time of the examination of Mrs. Baumgardner that Agent Vitello was hiding this and he was just coming up with this [176] at this time and this question in the record is explaining why he did not testify to these matters at the criminal trial.

Mr. Bouchard: That isn't the proper redirect examination.

The Court: Overruled.

The Witness: Mrs. Baumgardner was not a defendant in the criminal trial and I could only talk about conversations that were held with Mr. Baumgardner or in his presence.

Mr. Sullivan: Thank you. Mr. Bouchard?

Mr. Bouchard: All right, that is all.

The Court: You are excused.

(Witness excused.)

Mr. Bouchard: Now, your Honor, we had some testimony yesterday from Mr. Adams and I asked him some questions as the basis for impeachment

and rather than be required to call the court reporter who took his testimony in the prior proceeding, Mr. Sullivan has agreed with me that he would stipulate that the questions that I asked and the answers made, as read by me to him, were given in that trial but Mr. Sullivan, it seems to me that he would like to have the entire testimony given by Mr. Adams, both direct and cross, in the criminal trial, offered in evidence in this case, and if he wants it, I have no objection to it.

So I may say that when we prepared the stipulation which [177] is now on file, one of the things that I was asked to stipulate to was that if Mr. Adams were produced, he would testify to the same things and the same went to Miss Miller. I refused to do that because they were the type of witnesses I wanted to take the stand.

It is in the record in this case that Miss Miller was under subpoena by the Government and arrived yesterday and had to be sent home for reasons which have been brought out and we have agreed that the testimony which Miss Miller gave in the criminal trial be offered in evidence here and I think that we have the testimony of both Mr. Adams and Miss Miller in one folder, is that right?

Mr. Sullivan: That is right.

Mr. Bouchard: And Mr. Sullivan has volunteered to use his copy of those depositions and I shall let him have access to mine whenever he wants them.

The Court: It will be admitted.

The Clerk: Respondent's Exhibit OO.

(The document above referred to was marked Respondent's Exhibit OO for identification, and received in evidence.)

The Court: I hope those letters which are used to identify the exhibit are not descriptive of the testimony.

Mr. Bouchard: I beg your pardon.

The Court: I said, I hope those letters which are [178] used to identify the exhibit are not descriptive of the testimony.

Mr. Bouchard: Your Honor had the benefit of hearing Mr. Adams, who I had intended to read into the record, the verbatim testimony of Miss Miller. I will not take up the time of the Court to do it now, because the Court will have it before it when it considers the case.

May it please the Court, there is one thing that I want to apprise the Court of. Last night, after I returned to the office, I found a note from Miss Irene Strewn who was a witness called by the Government yesterday morning.

I said I could not talk to her this morning but she persisted and I talked to her and she was quite disturbed about the fact that she discovered she had made an error in her testimony and she wanted to know what to do about it. And I said, "Well, if you come up to the Court today, I will apprise the Court of the fact that you would like to change your testimony and the Court can receive your correction on its own motion."

I advised Miss Strewn by telephone at 9:00 this

morning of that conversation; when I got here this morning, Miss Strewn was with Mr. Vitello and Mr. Sullivan and she was in quite an emotional state. I am not an accountant. She tried to explain to me what she wanted to correct.

Mr. Sullivan and Mr. Vitello apparently did [179] not want to recall her to the stand. Mr. Vitello and I went over what she was trying to do and Mr. Vitello was as sure as me that the correction in her testimony, if made, will have no effect upon any issue that is involved in these proceedings. That it would relate to a possible tax liability of somebody that we are not concerned with and he felt that the change would not affect any issue in this case, so with that information from him, I simply said to Mr. Sullivan that I did not see any reason for her to take the stand, unless she insisted on it and so she has gone home.

That is a correct statement, isn't it?

Mr. Sullivan: Yes.

The Court: Thank you.

Mr. Bouchard: I will now call Mr. Lococo.

The Clerk: Tell us your name, please, Mr. Witness?

Mr. Lococo: Andrew Lococo.

Whereupon,

#### ANDREW LOCOCO

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

# By Mr. Bouchard:

- Q. Where do you live, Mr. Lococo?
- A. At 231 Manor Drive, Hawthorne. [180]
- Q. What is your business or occupation?
- A. Restaurant and cocktail bar.
- Q. What is the name of your bar?
- A. The Cockatoo.
- Q. The Cockatoo? A. Yes.
- Q. Are you acquainted with Mr. Baumgardner?
- A. Yes; I am.
- Q. And Mrs. Baumgardner? A. Yes; I am.
- Q. How long have you lived and operated your business in Hawthorne? A. Ten years.
- Q. Were you acquainted with a person by the name of James or Jimmy Bruno?
  - A. Yes, sir.
- Q. Are you familiar with the Beacon Cafe in Hawthorne, Mr. Lococo?

  A. Yes; I am.
- Q. Are you acquainted with Clyde Walker, the former owner of that cafe?

  A. Yes; I am.
- Q. Did you ever have a talk with Mr. Baumgardner with respect to him representing any person wishing to buy an interest in the Beacon [181] Cafe?

  A. Did you say Mr.——
  - Q. Mr. Baumgardner.

A. Well, ask me that question again, please?

Mr. Bouchard: Will you please read it, Miss Reporter?

The Reporter: Yes, sir.

(Question read.)

The Witness: Yes.

- Q. (By Mr. Bouchard): When was it, as near as you can remember?
- A. I don't remember exactly, 1947 or 1946, about in there.
  - Q. And where did the conversation take place?
  - A. At the Cockatoo.
- Q. What was said by you and what was said by Mr. Baumgardner in respect to it?
- A. I knew that Jimmy was interested in the Beacon Cafe in Hawthorne——
  - Q. By "Jimmy" you mean——

The Court: By "Jimmy" do you mean Mr. Baumgardner, Mr. Lococo?

The Witness: No; Jimmy Bruno.

The Court: All right.

The Witness: And he asked me if I would intercede for him about the Beacon Cafe and I talked to Jack about it. [182]

- Q. Did you tell Mr. Baumgardner that Jimmy Bruno was interested in acquiring an interest in the Beacon Cafe, Mr. Lococo? A. Yes.
- Q. And did you ask Mr. Baumgardner whether he would front for him and try to buy the interest for him?

  A. Yes.

- Q. And what did Mr. Baumgardner say?
- A. At the time I talked to him he said he would look into it and try and get together with Jimmy and see what he could do for him.
  - Q. Now, are you acquainted with Mr. Staten?
  - A. Yes.
- Q. And do you remember when he was operating the Beacon.Cafe?
  - A. 1948 or 1949, one of the two years.
- Q. Mr. Staten appeared here as a witness yester-day, Mr. Lococo, and testified that he operated the Beacon Cafe for a period of about one year to date, I think he said, and that you came to him and told him that you were going to take over the running of it; is that correct?
- A. In a respect, yes; it is correct. The answer is correct.
- Q. Who requested you to take over the operation of it? [183] A. Jimmy Bruno.
  - Q. And did you take over the operation?
  - A. Yes.
- Q. And I think the record in this case shows that it was in the early part of 1949, January, 1949. Did you pay Mr. Staten anything for any interest he may have had?
  - A. I did not transact one cent with Mr. Staten.
  - Q. You did not pay him money or anybody?
  - A. No.
- Q. When you operated that cafe, were you operating it for someone other than yourself?

- A. I was operating it for Jimmy Bruno.
- Q. And during the time at least that you operated it, did Mr. Baumgardner have any interest in it?

  A. No.
  - Q. Did the cafe have a liquor license?
  - A. Yes.
- Q. And when you took it over in January of 1949, whose name was the liquor license in?
  - A. The liquor license went under my name.
- Q. How long did you continue to operate the cafe, Mr. Lococo?
- A. About one year and one month. I would say approximately one year.
  - Q. And what did you do with it? [184]
- A. It was just losing money so I told Jimmy that unless he wanted to put money into it to keep it going, there was no money to be made in it and it was taking my time because the deal I had with him was that I would get a percentage and I wanted to get out of it.
  - Q. And did you get out of it? A. Yes.
- Q. At the time you got out of it, what did you do with the liquor license?
  - A. A broker handled it.
  - Q. You sold it? A. Yes.
  - Q. Through a broker? A. Yes.
- Q. And from the time that you got out and sold the liquor license of the cafe, you have never had anything to do with it since? A. No.

Mr. Bouchard: That is all.

## Cross-Examination

By Mr. Sullivan:

Q. Mr. Lococo, did you report the Beacon Cafe on your tax return as a profit or a loss?

A. As a profit and loss I believe my income tax shows that I did take a loss on the Beacon [185] Cafe.

- Q. You took a loss deduction did you?
- A. Yes.
- Q. For somebody else's money on your income tax return? A. Yes.
- Q. Did you know that you were doing wrong there, Mr. Lococo?

  A. Not particularly, no.
- Q. When you sold the liquor license, what did you do with the money?

  A. Gave it to Jim.

Mr. Sullivan: Will you mark this document as Respondent's Exhibit next in order for identification?

The Clerk: PP.

(The document above referred to was marked Respondent's Exhibit PP for identification.)

Q. (By Mr. Sullivan): Do you wish to explain something, Mr. Lococo?

A. Yes. What money are you talking about? Let me get this clear.

Q. You said you sold the liquor license and the proceeds therefrom——

A. The proceeds therefrom was a lot of bills that

were paid, bills that were due. That is where that money went to from the liquor license. [186]

The Court: Whose bills were they?

The Witness: The Beacon Cafe. Actually I was fronting for Jimmy Bruno. The bills were for the Beacon Cafe.

- Q. (By Mr. Sullivan): Did Mr. Bruno tell you to use the money to pay the bills?
  - $\Lambda$ . They had to be paid.
  - Q. Did he tell you?
  - A. I believe he was dead and they had to be paid.
- Q. I show you Respondent's Exhibit PP marked for identification and ask you if you can identify that? A. Yes.
  - Q. What is it Mr. Lococo?
- A. It is a check for \$4,980.00 made out to Andrew Lococo from Ralph Myer.
  - Q. And what does that represent?
- A. It represents the money from the liquor license that was sold.

Mr. Sullivan: I offer Respondent's Exhibit PP for identification into evidence.

Mr. Bouchard: No objection.

The Court: Admitted.

(The document heretofore marked Respondent's Exhibit PP was received in [187] evidence.)

- Q. (By Mr. Sullivan): When did Jimmy Bruno die, if you know?
  - A. Jimmy Bruno passed away, I believe, in Sep-

(Testimony of Andrew Lococo.)
tember of the same year that the Beacon was sold.
The exact date I don't remember.

- Q. It was before you received that check?
- A. That is right, it was about one month or six weeks before I received that check.
  - Q. What was Mr. Bruno's business?
- A. I don't know that he was in any other business outside of the Beacon Cafe. I knew him from my home town, Milwaukee.
- Q. When did he come out to California, do you know, Mr. Lococo?
  - A. About the early part of 1946.
  - Q. And he died in 1950? A. Yes.
- Q. At that time he wasn't in any business that you know of, except the Beacon Cafe?
- A. The Beacon and he worked for me for a little while. For how much of the time I don't remember but he worked for me for a little while.

Mr. Sullivan: That is all.

## Recross-Examination

By Mr. Bouchard:

Q. Mr. Lococo, was it the money that you received from [188] this check, Respondent's Exhibit No. PP, that you used to pay the outstanding bills of the Beacon Cafe? A. Yes.

Mr. Bouchard: That is all.

The Court: That is all.

(Witness excused.)

Mr. Bouchard: Mr. Baumgardner.

The Clerk: Will you tell us your name, Mr. Witness, please?

Mr. Baumgardner: M. R. Baumgardner.

Whereupon,

#### M. R. BAUMGARDNER

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

# By Mr. Bouchard:

- Q. Mr. Baumgardner, where do you live?
- A. 1545 Jackson Avenue, Hawthorne, California.
- Q. How long have you lived in California?
- A. Since 1924.
- Q. Where did you come from?
- A. From Oklahoma.
- Q. Prior to coming to California, were you employed in Oklahoma? [189] A. Yes, sir.
  - Q. Doing what?
  - A. I was a motion picture operator.
- Q. How much money did you earn in that job, Mr. Baumgardner? A. \$45.00 per week.
- Q. Were you married when you came to California? A. No, sir.
- Q. How long had you been earning this amount of \$45.00 per week in Oklahoma?
  - A. Three or four years I imagine.
  - Q. Did you have any money when you came to

California, Mr. Baumgardner? A. Yes, sir.

Q. How much?

- A. \$2,000.00 or \$3,000.00, maybe \$4,000.00. I don't know exactly.
- Q. When you got here, did you find yourself a job, Mr. Baumgardner?

  A. Yes.
  - Q. Doing what?
- A. I took a job as a dishwasher and then I started to work in the pool room and the hours were 8:00 in the morning until 8:00 in the evening and from 8:00 at night to midnight I worked in the pool room and from 8:00 in the morning to [190] the next night, I was in the fire department.
  - Q. Where did you sleep?
  - A. In the fire department.
- Q. What compensation did you get from your job in the restaurant? A. \$25.00 a week and my food.
  - Q. When were you married?
  - A. August 20, 1926.
- Q. Were you with the fire department at that time, Mr. Baumgardner? A. Yes.
  - Q. At the time you were married?
  - A. Yes, sir.
- Q. Do you remember what salary you got from the fire department?
- A. \$150.00 a month. And then I worked as an engineer.
- Q. You later became connected with the Hawthorne police department? A. Yes.
  - Q. When? A. 1927.

- Q. How long were you employed with the Hawthorne police department?
  - A. From 1927 until June, 1933.
- Q. You were chief of police for a period of time, were [191] you not?
- A. Yes; from November 8, 1937, until my retirement.
  - Q. In June of 1953? A. Yes.
  - Q. Do you have a family? A. Yes.
  - Q. How many children?
  - A. One daughter and one son.
- Q. At the time you worked in the police department of the City of Hawthorne, did you make any money outside of your salary from the city?
  - A. Yes, sir.
  - Q. Doing what?
- A. Well, I worked as an extra for parts that you play. I do not mean I was a movie star, but I was in parts for Metro Goldwyn Studio—oh, it could have been for one or two years and on.
- Q. And that is in connection with the making of pictures, is it? A. Yes, sir.
- Q. What compensation did you receive for those services, Mr. Baumgardner? A. \$40.00 a day.
- Q. Now, did you derive any portion of income from any other source? [192] A. Yes, sir.
  - Q. From what?
  - A. City of Hawthorne stocks or bonds.
- Q. When did you start buying those bonds of the City of Hawthorne?

- A. In the early thirties, 1934 or 1935, something around in there.
- Q. Over what period of time did you engage in that business?
- A. Through 1938 and 1939. I cannot tell you the exact time.
- Q. From whom did you buy these municipal bonds of the City of Hawthorne?
- A. Tad Travers, and there were bonds exchanged back and forth between Government officials of the City of Hawthorne.
- Q. Do I understand from your testimony that not only you but other officials and employees of the City of Hawthorne were buying and selling bonds of the City of Hawthorne?
- A. Yes. They had meetings in which they stated that the bonds were available to any and all who wanted to buy them.
- Q. Do you have any idea, Mr. Baumgardner, about how much money you made over that period of time in buying and selling these municipal bonds?
- A. \$12,000.00, \$13,000.00, \$15,000.00 maybe \$16,000.00. [193]
  - Q. What did you do with the money?
  - A. I kept it at home.
  - Q. Why didn't you keep it in the bank?
- A. Well, my experience as a controversial person in the City of Hawthorne is that you were always subject to a lawsuit because of false arrest or something you had done wrong, so I kept it at home.

- Q. Were you a controversial person in the City of Hawthorne?
  - A. For twenty-nine years; yes, sir.
- Q. Isn't it a fact that during your experience as Commissioner of Police you lost your job and then sued to get it back and succeeded?

  A. Yes.
- Q. And then you were demoted and finally reinstituted as chief of police? A. Yes.
- Q. So that you have been in and out more than once, Mr. Baumgardner? A. Yes, sir.
- Q. What did you ultimately do with these moneys that you had made from the sale of the bonds?
- A. Well, actually, one day you would be rich and the next day you would be poor. You could have all your money in bonds and exchange it back and forth and one month you would be [194] well off and the next month you would be poor.

That went on for a period of time, in the early thirties and up to 1939.

- Q. After you had acquired these monies, what did you do with the monies?
- A. I invested in real estate, in buying Mortgage and Trust Deeds.
- Q. There has been offered into evidence, Mr. Baumgardner—I don't know if you have seen it—since you have been in the courtroom, a schedule of properties owned by you in the various years. I think you have seen it and that we have agreed is a correct statement of properties that you owned at the time?

  A. Yes, sir.

- Q. And were those properties purchased out of these funds? A. Yes; they were.
- Q. Mr. Baumgardner, we have stipulated in this case that if Archie Sneed were called to testify, he would testify as follows:
  - "Q. Do you know Mr. Baumgardner?
  - "A. Yes, sir.
- "Q. How long have you known Mr. Baumgardner? A. Twenty-five years."

And he would testify that during the year 1951, he [195] was a general partner in the Embassy Club and that that partnership consisted of himself as a general partner and five limited partners, and I think it was a poker club.

And that on January 1, 1951, he made a gift of five per cent interest in the Embassy Club to you and that you paid nothing for it and it was given to you by him voluntarily because of your friendship.

Will you explain the circumstances under which Mr. Sneed gave that five per cent interest to you?

A. There were three or four of us having lunch in a restaurant located in Van Ness and Florence Avenue, Los Angeles. Mr. Sneed came in and sat down at the booth with us and was telling us a story about giving—I have forgotten, fourteen or fifteen per cent of the business to some friend, who later died, and that it cost him \$15,000.00 to get it back.

I said then, "You are big hearted as long as I have known you, why don't you be generous to me?" And he said, "Well, I shall as of now give you five per cent."

- Q. In what? A. Of the Embassy Club.
- Q. And there has been offered in evidence here, Mr. Baumgardner, as one of the exhibits, that partnership agreement 4-D—I will show you, Mr. Baumgardner, Exhibit, Respondent's Exhibit 4-D, which is a photostatic copy of that partnership agreement, and ask you if that signature "M. R. Baumgardner" is [196] your signature?

  A. It looks like it.
- Q. Well, it looks like it to you and I stipulated that it was.

Now, Mr. Baumgardner, during the year 1951, did you receive any income from the Embassy Club?

- A. No, sir.
- Q. Mr. Pool has offered in evidence a letter which he says he sent to the partners of the Embassy Club some time in March of 1952, showing them what he claimed to be their distributive share of the income.

Did you report on your 1951 income tax return any income from the Embassy Club?

- A. I do not believe I did because I did not receive any.
  - Q. That is the reason you did not report it?
  - A. Yes, sir.

Mr. Bouchard: Mr. Vitello, do you have a photostatic copy of Mr. Baumgardner's return for 1952?

Mr. Vitello: Yes.

Mr. Bouchard: Can I see it?

Mr. Sullivan: Here it is.

Q. (By Mr. Bouchard): Mr. Baumgardner, do you remember discussing with Mr. Vitello your interest in the Embassy Club? [197]

- A. Yes, sir.
- Q. And did you have a conversation with him with respect to what you should do in filing your future returns with regard to the Embassy Club?
  - A. Yes, sir.
  - Q. What was it?
- A. On the first interview, I believe with Mr. Vitello, he came out with a statement, I believe, that was prepared by Mr. Pool, which I had never seen before and I had no knowledge of it.

It stated that there had been a gain or so much money earned by the partnership and showed a check with my signature on there or alleged to be my signature and I said, "Well, if that is the case, I am more or less in a jam."

- Q. What was the amount of the check?
- A. \$250.00 I believe it was.
- Q. \$250.00? A. I believe it was.
- Q. And that check was shown to you?
- A. Yes; it was.
- Q. And the endorsement M. R. Baumgardner was on the back of it?
  - A. Yes; but it wasn't my signature.
- Q. Did you advise Mr. Vitello that that wasn't your signature? [198]
- A. I did and as I stated there was a "t" instead of a "d."
- Q. Was the name "Baumgardner" spelled correctly?
  - A. I pointed out it was a "t" instead of a "d."
    - Q. I show you the photostatic copy of your 1952

income tax return which Government counsel has handed me—

Mr. Sullivan: First, may I have that marked for identification, please?

Mr. Bouchard: Just a minute, if you please.

- Q. (By Mr. Bouchard): This shows \$3,238.57 which apparently you listed as income in 1952.
  - A. Yes, sir.
  - Q. Did you ever receive that money?
  - A. No, sir.

Mr. Bouchard: I will offer this as our exhibit—I realize I took it from your file but I assume you have got another one.

Mr. Sullivan: I was going to put it in as my exhibit if you were not going to do so.

The Court: Well, we will have to wait for the Clerk, unless you can find the "admitted" stamp there.

Mr. Bouchard: We will just leave that for him to do. [199]

- Q. (By Mr. Bouchard): You did, however, receive some money during 1952 from the Embassy Club, did you not?
- A. After I made a little investigation myself, I received some \$750.00, I believe it was.
  - Q. That was a poker club out in Gardena?
  - A. Yes, sir.
- Q. And those clubs are licensed and legal in that area?
  - A. Yes; in the state of California.

- Q. Were you ever in the club?
- A. Since the very opening, I don't think I have been in there more than three times. I have been in there twice prior to this investigation.
- Q. Did you hear Mr. Vitello's testimony this morning, Mr. Baumgardner? A. Yes, sir.
- Q. Did you hear his testimony to the effect that in one of his interviews with you he inquired about commissions that you had reported on your tax returns for the years 1947, 1948 and 1949, in the amounts of \$2,000.00, \$3,000.00 and \$6,000.00?

Did you hear his testimony to the effect that when he asked you what it was that you told him it was from sources which if you disclosed them to him you might lose your [200] job; did you hear that testimony? A. Yes.

- Q. Did you make such a statement to him in any of your interviews with him?
- A. It wasn't that exact statement. I said, "It might cause me trouble."
  - Q. Could it or did it cause you trouble?
- A. The City of Hawthorne states that no employee shall receive wages or moneys other than their wages unless you have permission of the Civil Service Commission and the Council of the City of Hawthorne—242.
- Q. Mr. Baumgardner, you maintained a savings account at various times in the Bank of America, did you not? A. Yes, sir.
- Q. First, let me ask you, did you keep any books or records of your various real estate transactions?

- Λ. No, sir; I am sorry I did not.
- Q. Why didn't you do it?
- A. I wasn't in any kind of a business—I did not have any kind of education to keep them, if I had wanted to.
- Q. Respondent's Exhibit No. 3-C is a schedule of interest income received, not received by you but rather earned by you during the years 1944, 1945, 1946, 1947, 1948, 1949, 1950 and 1951, in various amounts. In 1944 it is \$115.03. You can see those totals. Were these amounts of interest [201] paid to you during those years or were they credited to accounts in the bank?
- A. All deposited in my name with the Bank of America.
- Q. Were there any of them that were paid to you by check that you are able to recall? Looking over them, for example, this one—
  - A. Yes; he paid his by check.
  - Q. Who? A. Mr. Mann.
  - Q. And were the others—
- A. They were all deposited in the Bank of America, Hawthorne Branch.
- Q. And were the moneys that were deposited there to your account—did they include principal and interest or were they just interest?
  - A. Principal and interest.
  - Q. On Trust Deeds owned by you?
  - A. Yes, sir.
- Q. We have stipulated, Mr. Baumgardner, that in 1935 you acquired a piece of property at 162

Ramona Avenue at a price of \$2,500.00 and that you sold that property in 1944 for \$7,353.17; what kind of a property was that?

A. Dwelling.

- Q. Did you live in the dwelling?
- A. Yes; we did. [202]
- Q. For how long a time?
- A. Oh, I would think somewhere—either—somewhere around 1938 or 1939.
  - Q. And then what did you do with it?
  - A. Well, we rented it for a while.
  - Q. Until you sold it? A. Yes.
  - Q. In 1944? A. Yes.
- Q. During the course of time that you had that property, did you have to make any improvements on it? A. Yes, sir.
- Q. What were the nature of the improvements and what is your best estimate of the amount of those improvements, Mr. Baumgardner?
  - A. For the entire time I held it?
  - Q. Yes.
- A. Well, there was dry rot and those bugs that eat up furniture, termites.
  - Q. Termites?
- A. Yes; and after a period of years we got the termites out of it and then we put in a retaining wall in it, that cost around \$2,500.00, I think.
- Q. We have stipulated that you acquired property at 158 Ramona Avenue in 1941 at a cost of \$2,064.00 and that you [203] sold it in 1944 for \$5,816.00; what kind of a property was that?
  - A. It is next to the one you mentioned first, and

it was in a worse condition than 162. I had to tear the thing down and almost rebuild it.

- Q. Do you have any idea what the cost of those improvements would be?
- A. It was more than 162. It would have cost about \$3,000.00 I would say.
- Q. Now, we have agreed to stipulate that you purchased property at 611, 617 Truro Avenue, Hawthorne, in 1940 and paid \$5,236.00 and you sold it in 1945 for \$11,000.00; what kind of property was that?
- A. That piece of property was purchased by my father. He wasn't able to carry it on so I took it over for him. I did sell it later on for \$11,000.00.
- Q. And you made, during the time that that property was held by your father or yourself, what improvements if any?
- A. The entire City of Hawthorne in those years was sunken. Every place in town had to be rebuilt and the concrete foundation had to be built higher. That was even worse than the two others because of the place it was located in and I spent a pretty good lump on it.
- Q. What would be your best estimate of [204] that?
  - A. Well, say \$2,500.00, something like that.
- Q. Mr. Baumgardner, we stipulated in the record—it isn't pursuant to a written stipulation—that in 1945 you loaned \$6,500.00 to a man by the name of Gibson—do you recall that? A. Yes, sir.
  - Q. And that in 1946 he repaid you the sum of

(Testimony of M. R. Baumgardner.) \$6,900.00, is that right? A. Yes, sir.

- Q. Which looks as though you made \$400.00 on that transaction. That doesn't appear to have been returned as income by you in your return for 1946. Why did you not report that?
- A. At a very short date later, he came to me and borrowed \$500.00 to go to Kentucky to bury his brother who had been shot, so I did not get the \$400.00.
- Q. Well, you made \$400.00 and you loaned him \$500.00 within a short period of that? A. Yes.
  - Q. And did he ever pay back that money?
  - A. \$50.00 of it I got.
  - Q. Is that all you ever got? A. That is all.
- Q. What was the conversation you had with Mr. Vitello the first time that he met you in August of 1952 at the police [205] station in Hawthorne?
- A. He came to the police department, introduced himself and showed me his credentials and I made the statement that I was used to working with Internal Revenue men and I invited him into my office.

The first question I believe he asked me was, "I understand you were a motion picture operator in Oklahoma in previous years at \$45.00 a week?"

I said, "Yes, sir," and then I said, "What are you doing? Are you investigating me."

And he said it was nothing to get worried about, it was just a record check. Then he wanted to know if I was married and what were these commissions

on my return, and I said, "Are you putting a number on my back instead of a name?" And he kept emphasizing the fact that it was just a routine check. He wanted to know who my accountant was and about the various properties and Trust Deeds. That is just about the conversation.

- Q. At the time he exhibited his credentials to you, did you know the different functions of a special agent and a revenue agent?

  A. No, sir.
- Q. Was it at the first visit that he asked to see the records you had? A. Yes. [206]
- Q. And you directed him to go to Mrs. Baumgardner and get them?

  A. I did.
- Q. At his request, did you also give him permission to open your safety deposit box?
  - A. I did.
  - Q. And inspect that? A. Yes.
- Q. And did you tell Mr. Vitello that you had made quite a little money in the thirties in dealing in Hawthorne bonds?

  A. I did.
- Q. And did you tell him that some of this money that you had made dealing in Hawthorne bonds had been used to improve some of these properties that we admit you owned?
  - A. I think I did but I am not sure.
- Q. Did you, in your work in the police department, Mr. Baumgardner, earn commissions from any sources?
- A. Well, I think the accountant put them down as commissions, but actually I received them as a gratuity. Numerous times I would have people come

in and ask for private investigations and I would receive sometimes \$25.00, \$50.00 or \$100.00. It all depended on how much the case for the private investigation amounted to.

- Q. Now, when you filed your income tax for the years [207] here involved or for any other year, for that matter, was it your opinion that you had included in your return all of the income that you had received during that year?
- A. More than enough, yes, sir. I thought I was being very fair.
- Q. Now, on your return of 1949, Mr. Baumgardner, this is Respondent's Exhibit No. 9-I, you report commission of \$6,000.00 in 1948; you reported miscellaneous commissions \$3,000.00 which is Government's Exhibit H and in 1947 commission, Exhibit 7-G, you reported—excuse me, give me a moment, your Honor—you reported commissions of \$2,000.00.

Now, were those commission amounts that you reported—what are they intended to cover?

- A. Any moneys I might receive during the year for interest, for gratuities or anything that might come along, other than my salary.
- Q. I notice that in the year 1949 you reported \$6,000.00 but in 1950, you did not report commissions—did you have income from outside sources in the year 1950, Mr. Baumgardner?
- A. No, I wasn't working in the early—in the latter part of 1950.
  - Q. That was-strike that out, please. Was that

(Testimony of M. R. Baumgardner.)
one of those years when you were on the out as
chief?

- A. That is when I got fired again. [208]
- Q. Then you were reinstated?
- A. Yes, sir, in 1951.
- Q. Now, I think you testified that all of the interest income that you received was shown on the Exhibit Respondent's 3-C, with the exception of the income from Mr. Mann which was credited to your account in the bank?
  - A. To the best of my knowledge, yes, sir.
- Q. In the course of your taxable year or prior to the time you made out your return for that year, did you call up the bank and ask them how much money they had credited to your account?
  - A. No. sir.
  - Q. It never occurred to you to do it?
- A. No, because I thought Mr. Ludolph knew it was about the same every year.
  - Q. They were on the same Trust Deeds?
  - A. Yes, sir.
- Q. Now, you heard Mr. Adams' testimony, did you not, Mr. Baumgardner? A. Yes, sir.
  - Q. You have also heard it before, haven't you?
  - A. Several times.
- Q. Did you ever have any deals or understanding with Mr. Adams that for a consideration that you, as chief of police, would afford him police protection for operating a [209] house of prostitution in Hawthorne?

  A. No, sir.
- Q. Did you ever have any such understanding with Mr. Ganatta?

  A. No, sir.

- Q. Did you know Mr. Ganatta very well?
- A. Yes, very well.
- Q. What did he do in Hawthorne?
- A. He owned the City Cab.
- Q. Did Mr. Ganatta ever pay you \$300.00 a week or any other sum for affording police protection to either Mr. Adams or Phyllis Miller, or both?
- A. He or no one else ever paid me any protection, period.
- Q. Did you hear Mr. Adams' testimony to the effect that he and Mr. Ganatta had a conversation with you in the alley adjoining the police station?
  - A. Yes, sir.
- Q. Did you and Mr. Ganatta and Mr. Adams meet in the alley and have a conversation about anything?

  A. Yes, sir.
- Q. What was the conversation and how did it take place?
- A. Prior to this meeting of Mr. Adams and Mr. Ganatta, I had issued orders to pick up the license of Raymond Adams [210] because he falsified his application. It states thereon:

"Have you ever been convicted of a felony?" And he put on it, "No."

And after going through the matter with the Federal Bureau of Investigation and the State Bureau of Investigation, the reports came back showing that he had been convicted so Captain Parker was instructed to pick up his cab license.

The reason for the conversation in the alley was Mr. Ganatta asking me to give him another chance.

He was financially destitute and he had a wife and kids and that I would be doing him a favor, and after talking back and forth I agreed to let him have it, but that he would have to be responsible and if he ever saw anything wrong that he would turn the license in himself and he did a short time later.

- Q. Mr. Ganatta did? A. Yes, he did.
- Q. Did he discharge Mr. Adams?
- A. Yes, he did.
- Q. By the way, Mr. Baumgardner, have you ever been convicted of a criminal act, either a felony or a misdemeanor?
  - A. This is my first arrest.
  - Q. What do you mean?
- $\Lambda$ . The one that Mr. Ganatta was responsible for.
  - Q. Have you ever been convicted?
  - A. I have never been in jail. [211]
- Q. I did not ask you that. You have never been convicted of a criminal act, either a felony or a misdemeanor, have you?

  A. No, sir.
- Q. Did you hear Mr. Adams' testimony to the effect that in this conversation you—let me see your other hand—did you hear the testimony of Mr. Adams that he had this conversation with you that you showed him a diamond ring and that you said that some madam had given you that?
  - A. Yes, I did.
- Q. Did you ever have such a conversation with him, Mr. Baumgardner? A. No.

- Q. How long have you worn that diamond ring, Mr. Baumgardner? A. Since 1946.
  - Q. Where did you get it?
  - A. I got it from the brothers of the lodge.
  - Q. What was the occasion for that?
  - A. I was made a 32nd degree mason.
- Q. Did you ever get—strike that out, please. Did you ever meet Mr. Adams or Mr. Ganatta at the donkey baseball games? A. Never.
- Q. Did you ever learn that a house of prostitution was [212] being operated in Hawthorne by Mr. Adams and Phyllis Miller, Mr. Baumgardner?
  - A. Yes, sir.
  - Q. How did you learn about it?
- A. Officer McGowan and Officer Hill were the two officials that were working on the evening radio car. Officer Hill told me that there was more traffic than usual on 141st Street and I said, "What kind of traffic"?

And he said, "Taxicabs." When he was relieved at at 8:00 in the morning he reported that to me. The next evening I went in the radio car with he and Officer McGowan but there was no activity for some reason or other and it was shut off before we got there.

- Q. How long did it actually operate?
- A. Five or six days. When Phyllis Miller testified it was eight days, I will agree with her because it might have been eight days before we found it.
- Q. Mr. Adams testified that he had this conversation with you and he said you said that you would

think about it and would suggest a place for him to open up.

- A. He would testify to anything because I took his license from him.
- Q. Well, there is no truth in that statement, is there? A. No. [213]
  - Q. How big a town is Hawthorne?
  - A. 28,000.
- Q. Has there been much or little vice in Hawthorne, Mr. Baumgardner?
  - A. Very little vice.
- Q. It has the reputation of being a clean little community?

  A. Yes, that is true.
- Q. Did you ever buy any property, Mr. Baumgardner, in the name of either your daughter or your son?
- A. Yes, I bought automobiles but I cannot remember about any real property.
- Q. You say you bought an automobile in either your son or daughter's name? A. Yes.
  - Q. Why did you do that?
- A. Well, we were always subject to false arrest. The more you have in somebody else's name, the less possibility there is that they can take it away from you.

The Court: We will have a short recess.

(Short recess taken.)

The Clerk: The Court is now in session.

Q. (By Mr. Bouchard): Mr. Baumgardner, the principal items that the Government claims which

were left off of your tax returns were [214] interest and in one case, \$20.00 or \$25.00 worth of dividends that I will refer to in a minute.

Why did you not, on your tax returns, include specifically these items of income which I have stipulated to were earned by you in those years?

- A. The biggest part of these—the interest, I was paying out more than I was getting in.
  - Q. Was the interest actually paid to you?
- A. Actually I never received any of it. It was deposited in my account.
- Q. But as well as having earned income, these amounts, were you also paying interest on obligations? A. Yes, sir.
- Q. Now, you started building your home in 1948, did you not?

  A. I believe so.
  - Q. And did that require any cash?
  - A. Yes, sir.
  - Q. How much?
- A. I borrowed \$7,500.00 from the Bank of America and I think I have \$6,500.00 today.
  - Q. And what did the house cost you?
- A. It cost me \$14,500.00, all equipped and ready to move in.
  - Q. You mean furniture— [215]
  - A. That was furniture and everything.
- Q. Mr. Baumgardner, if there is any income or if it is established in this case that there is any income that you earned or which was earned by you in any of these years that wasn't reported on your return, regardless of what amount it was, was any

(Testimony of M. R. Baumgardner.) of that income omitted by you the purpose of evading any tax?

A. No.

- Q. Did you, during these years 1942 to say 1949, have any substantial amount of cash on hand?
- A. Yes, at one time I probably had \$15,000.00, \$16,000.00 or \$18,000.00 probably.
- Q. And was that money that was a result of your dealing in the bonds you have talked about?
  - A. Yes.
- Q. And you did, did you not as police chief, make some money on private investigations?
  - A. Yes, sir.
- Q. Now, what was your cash position say during the years 1950 and 1951?
- A. Oh, I would be down a few thousand. I built four little homes and I was building my own home, so I was getting pretty low until I sued the Hawthorne Press and then I got liquid again.

The Court: You got liquid or licked? [216] The Witness: Liquid.

- Q. (By Mr. Bouchard): As a matter fact, you recovered rather a substantial amount from the Hawthorne Press in the libel action, did you not?
  - A. Yes, I did?
  - Q. A rather substantial amount?
  - A. Yes.
  - Q. What was the amount?

Mr. Sullivan: I object. This is not relevant because it isn't in the tax years.

Mr. Bouchard: Was the suit in 1951, 1952——

The Court: Well, let him answer the question. What was the amount?

The Witness: The judgment was \$17,500 and there was a settlement of \$13,500.00.

The Court: Did you receive any of these amounts in the taxable years?

Mr. Bouchard: I believe not, your Honor.

The Witness: The income tax report will show it exactly.

Mr. Bouchard: No, your Honor.

May I approach the witness, your Honor?

The Court: You may. [217]

- Q. (By Mr. Bouchard): Mr. Baumgardner, it is the contention of the Government in this case that you had some interest in the Beacon Cafe—you know where the Beacon Cafe is?

  A. Yes, sir.
  - Q. How long have you known that?
- A. Ever since the beginning, I think, it was in 1933.
- Q. Where is it located with reference to the police station?
- A. It is across Hawthorne Boulevard and about one block north from the police department.
- Q. You have heard some testimony in this case to the effect—and this testimony comes largely through exhibits in the form of escrows that you gave Mr. Walker or he understood you put up the money for a half interest in the Beacon Cafe—did you hear his testimony?

  A. Yes, sir.
- Q. Did you put up some of your own money to purchase an investment in the Beacon Cafe?

- A. No, sir.
- Q. Why did you say, "No, sir"—I call your attention to the fact that the escrows show that you put up certain money in escrow—explain this whole Beacon Cafe transaction to the Court.
- A. All the officials of the City and County used to [218] meet for lunch and one day while I was in there, I was approached and asked to see what I could do for Jimmy Bruno, that he was interested in part or all of the Beacon Cafe. It was Andy Lococo who approached me, and I told him I would do what I could.

After that, Clyde told me that they were trying to get——

- Q. That is Clyde Walker?
- A. Yes, and one morning I was sitting talking in the Beacon Cafe and he said he could get it for me, so I think I gave him some cash and possibly a check. It was about the time that Lee Gibson was closing the escrow.
- Q. And that is the \$6,900.00 check that we have stipulated to here?
- A. Yes, that is right. I endorsed it over to him. Any way, after I gave him this money, he told me he would take it to escrow and that is how I got involved with Clyde Walker.
- Q. Did Mr. Lococo make—did Mr. Lococo give you any reason why he wanted you to front for Jimmy Bruno?
- A. He either stated it was because he was having domestic trouble or he had a record. I don't remem-

ber now but I have heard many things since. I think it was because of his domestic trouble in Milwaukee.

- Q. You say that this \$6,900.00 you got from Gibson you transferred into this escrow; did you ever receive that back [219] from Jimmy Bruno?
  - A. Oh, yes.
- Q. And any moneys that you advanced in the various years you were reimbursed by Mr. Bruno, were you?

  A. Always.
- Q. Now, you remember when Mr. Staten became interested in the Beacon Cafe, do you?
  - A. Yes, sir.
- Q. What were the circumstances under which he became interested?
- A. Well, we were having a little party for Jim Staten's return from the armed forces and the proposition was to see if I could get Staten in there and he agreed to take it for one year. If he took it over at the end of the year he got half of it and if not, he was supposed to surrender it.
  - Q. Who was he going to surrender it to?
  - A. To Jimmy Bruno at the time.
- Q. Is that the extent of your connection or interest in the Beacon Cafe?

  A. That is it.
- Q. Was the Beacon Cafe any sort of an investment that would have interested you personally?
  - A. Not at all.
  - Q. Why?
- A. Because it is a dive at the back and had a third [220] rate restaurant at the front.

- Q. Now, you remember when Mr. Andrew Lococo took over and started to operate it, do you?
  - A. Yes, just about.
- Q. You never had any interest in the Cafe during his operation?
- A. I never had an interest in any cafe or bar, period.
- Q. Any of the moneys that you may have put up out of your own funds, as for example, the \$6,900.00 you say you think you put up in escrow, you put that up on behalf of Jimmy Bruno and he repaid you?

  A. Yes, sir.

Mr. Bouchard: I think that is all, your Honor.

### Cross-Examination

## By Mr. Sullivan:

- Q. Mr. Baumgardner, outside of bank and lending transactions, what is the largest amount of cash on hand that you had at any time?
  - A. \$16,000.00 to \$18,000.00.
  - Q. Do you know when that was?
- A. Oh, I imagine 1947 or 1949 or 1946 possibly, somewhere in there.
  - Q. Where did you keep it?
  - A. At home, all over the joint.
  - Q. You never counted it? [221]
- A. Why? I knew where it was. I felt that it was safe.
  - Q. Did you ever take vacations?
  - A. Yes, sir.

- Q. Did you leave the money just there around the house when you were on a vacation?
  - A. Yes, sir.
- Q. What did you do when you moved from one house to another?

  A. Took it with me.
  - Q. Did you count it at that time?
  - A. No, I did not. I carried it in my money belt.
- Q. Did you take it out of the places all over the house and put it into a money belt?
  - A. No, that is when I moved.
- Q. When you came from Oklahoma, you say you had \$2,000.00, \$3,000.00 or \$4,000.00? A. Yes.
- Q. You don't know whether it was \$2,000.00, \$3,000.00 or \$4,000.00? A. No, I do not.
- Q. Where did you live when you came out here to California?
- A. I stayed in the fire department. That was just about 1927. [222]
  - Q. Did you live there?
- A. Yes, when I was married I worked six days and six nights in the week.
- Q. Did the fire department furnish you with a separate room?
  - A. No, it was just a fire department.
  - Q. You mean it was just a dormitory?
- A. No, there was only two of us. It was only one great big room.
  - Q. Where did you have the money then?
  - A. In my belt.
- Q. Did you count the money when you got married, Mr. Baumgardner? A. No.

- Q. Where did you keep it after you were married and moved into a house or apartment?
- A. Picture frames, put it behind pictures, tobacco cans, coffee cans, and all over the place.
  - Q. When did you live at 162 Ramona?
- A. I believe that was 1935 or 1936, somewhere in there.
  - Q. 1935 or 1940?
- A. No, it would not be 1940 because we were living on 611 Truto then.
- Q. Where did you keep the money at 162 Ramona, Mr. Baumgardner? [223]
  - A. In my belt.
- Q. And you moved to 611 Truro from 162 Ramona, did you? A. Yes.

Mr. Bouchard: Your Honor, I makes this suggestion; I have one more witness that I think will be reasonably short and I hate to keep this man waiting. It is agreeable to Mr. Sullivan that we can put him on first, if it is agreeable with the Court.

The Court: It is agreeable to me. You are excused, Mr. Baumgardner, meantime.

(Witness temporarily excused.)

The Clerk: Will you tell us your name, please? Mr. Travers: Tad Travers.

Whereupon,

#### TAD TRAVERS

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

## By Mr. Bouchard:

- Q. What is your name, please?
- A. Tad Travers.
- Q. And your first name is Tad? [224]
- A. Yes, sir.
- Q. Mr. Travers, where do you live?
- A. 518 Anhurst Drive, Berkeley.
- Q. What is your business or occupation?
- A. I am in the oil business.
- Q. What company?
- A. The Brookline Oil Company of California.
- Q. Are you an officer of that company?
- A. I am the president of the corporation.
- Q. What was your business and occupation during the years 1932 to 1940?
- A. I was in the investment security business with a firm called Crowell, Weedon & Company, Los Angeles.
- Q. And is that one of the larger well-known investment houses in this city?

  A. Yes, it is.
- Q. During the period that you were with them, did they do a substantial volume of business in securities? A. Yes, sir.

Q. When did you start with them and when did you terminate your relationship with them?

A. 1932, at the inception of that business, that is, in that firm, actively until 1940 and then in the absence of several years, during the war period up to, as I recall, 1946.

Q. Now, during the period of time that you were with [225] Crowell, Weedon & Company, did you have anything to do with the municipal bonds of the City of Hawthorne?

A. Yes, sir.

Q. What did you have to do with them?

A. I might state that I was in charge of the municipal bond department. That is a function of the business and as such, we were appointed as the fiscal agents for the City of Hawthorne in connection with proceedings, refunding proceedings covering their very special assessment bonds.

Q. What was the financial position of the City of Hawthorne at that time?

A. It was very much impaired by reason of substantially all the properties, due in part to the special assessment of bond discounts that had been formed and taxes levied which were delinquent.

Q. What did you do in connection with your employment as a fiscal agent for the City?

A. Among other things, one of our duties was to prepare an analysis of the City's financial position, showing the delinquent properties and the various bond discounts that were in default and a comprehensive analysis of facts that would be pertinent to the situation, and the purchase—I mean the purpose

of which was preparatory to a refunding proceeding of the special assessment bonds and the subsequent restoration of the delinquent properties to the tax rolls. [226]

- Q. What was the only source of the income of the City of Hawthorne with which to pay off these bonds?
- A. I might answer your question by stating the principal or the prime source of revenue to discharge the debt would be the proceeds from the levy and collection of taxes on the special assessments, to provide the funds to service the debt. That would be the prime source.

However, there was an additional source. Under that schedule which incidentally, the most of these bonds which we are now discussing and for the purpose of this discussion we will identify as bonds, issued under the Municipal Bond Act of 1915—there were others, but we will confine our discussion to the 1915 bonds.

Now, in addition to the revenue or the source of revenue that I have just testified to, there was a secondary obligation in which the City was obligated to levy a tax in order to get ten cents on each \$100.00 of assessed valuation over the entire taxable property within the City, to provide additional funds to service these bonds.

- Q. What steps, if any, did you take as the fiscal agent, to work out a refunding of these delinquent bonds?
  - A. As a result of our analyses and our recom-

mendations and findings, we recommended to the City, one, that we hold a special election for the purpose of voting in the matter of bonds, to refund and pay off the existing default of the [227] special assessment bonds at fifty cents on the dollar.

- Q. Now, in connection with your work at Crowell, Weedon & Company, did either Crowell, Weedon & Company or you, acquire any of these bonds?

  A. We did.
- Q. And after acquiring them, did you sell any of them?

  A. Yes, sir.
- Q. Were you in charge of that part of the office of Crowell, Weedon & Company that had control in this bond market?

  A. Yes, sir.
- Q. That was your responsibility in the firm, was it, Mr. Travers?

  A. It was.
- Q. Now, what, if anything, did you do as fiscal agent for the City to apprise the people of the City of Hawthorne of the program that you had outlined?
- A. On numerous occasions, special meetings were called with the heads and members of the various departments, such as police, fire, water department and street department, meetings for the purpose of going over in some detail as to the problem on hand and the ways and means of accomplishing something to affect the refund of the special assessment bonds and restore the properties to the tax rolls. [228]
- Q. Are you acquainted with Mr. M. R. Baumgardner, commonly known as Jack Baumgardner, seated here at the table with me?

- A. Yes, sir.
- Q. How long have you known him?
- A. I first became acquainted with Mr. Baumgardener around 1933 to my best recollection.
- Q. And was that in connection with your duties as fiscal agent for the City of Hawthorne?
- A. Yes, sir. With this explanation, that at that time I am sure, at the time I am speaking of, 1933 or thereabouts, I wasn't an officer of the City of Hawthorne, that is, as a fiscal agent and under contract of employment, but we were dealing actively in bonds at that time and were familiar with the City and had made recommendations to the City.
- Q. Now, did you on any occasion during the years to 1930, when you were interested in the bond situation out there, did you sell any of these bonds—you personally—to Mr. Baumgardener?
  - A. I did.
  - Q. Did he pay for them? A. Yes, sir.
- Q. Were there more than one series of bonds that had been issued?
- A. Yes, there were quite a number of series, thirty or [229] something like that.
  - Q. Did you give me a figure?
  - A. In excess of thirty.
- Q. Were there some series that, from a buyer's standpoint, were preferable to another series?
  - A. Yes.
- Q. During those years in the thirties, did Mr. Baumgardner ever call you on the phone or talk to

you and ask your advice or opinion as to which series might be the better one to buy?

- A. He did.
- Q. Now, in dealing with those bonds—first let me ask you, are those bonds registered bonds?
  - A. Registered bonds?
  - Q. Yes. A. No, they were coupon bonds.
  - Q. Coupon bonds? A. Yes, sir.
  - Q. Not registered? A. No, sir.
- Q. Did you, at any time on one or more occasions, deliver bonds to the City Treasurer of the City of Hawthorne on a receipt basis?
  - A. Yes.
  - Q. Was that a common practice? [230]
  - A. Yes, sir.
- Q. Can you recall whether or not on any occasions when you delivered bonds to the City Treasurer on receipt basis that you told the City Treasurer who was going to buy those bonds and who they were for?
- A. I have no specific recollection. That was twenty some odd years ago.
  - Q. That is right.
  - A. I could not answer, no.
  - Q. You don't know? A. No.
- Q. Do you know whether or not on any occasion when Mr. Baumgardner may have asked your opinion as to which would be the better series to buy, whether you told him or not that you could have bonds of that series delivered for him if he wanted them?

  A. Well, substantially, yes.
  - Q. Have you any idea now as to how many

bonds Mr. Baumgardner may have purchased from you over the thirties, Hawthorne bonds?

- A. I have no idea as to the specific amount, no.
- Q. Well, would it be \$100,000.00 or \$1,000.00 or \$15,000.00 or \$20,000.
  - A. May I have a drink of water, your Honor? The Court: Sure. [231]

The Witness: Well, it wasn't of any great material amount such as \$200,000.00 or so. If it were it would have registered. The best way I could answer that question is to say it would be a limited amount, maybe some place between \$15,000.00 to \$35,000.

When I am speaking of \$25,000.00 or \$35,000.00, I am speaking of the par value of these bonds which are seven per cent coupon tax exempt bonds, and while that was due and payable by the City, the market value of these bonds at that time, they were selling at ten cents, twelve cents and fourteen cents on the dollar, so I am referring to the amount as \$25,000.00 or \$15,000.00 or \$30,000.00 or \$35,000.00, and I am quoting from my memory.

- Q. (By Mr. Bouchard): I understand.
- A. But the amount I am referring to is the principal amount, which is the obligation to be paid, not the market value. I want to make that clear.
- Q. That is right. I suppose the market value fluctuated? You could buy them at ten cents and if you held them long enough you could get thirty cents to the dollar?
- A. A number of bonds in cities, other than Hawthorne, and including Hawthorne, trading at eight

cents or ten cents were paid on a par and accrued interest basis, but whether those bonds [232] that I had sold to Mr. Baumgardner, whether or not any or all of these specific bonds were paid by the City at par and accrued or at a discount, if any, I have no way of knowing.

- Q. But some of the bonds of the City of Hawthorne were paid off at par and accrued?
  - A. Yes, some of them were, I know that.
- Q. The fact that these bonds were not registered means that they were freely transferable from hand to hand?

  A. They had currency value, yes.
  - Q. They had currency value? A. Yes.
- Q. During the thirties, Mr. Travers, were a good many, if you know, of the employees of the City of Hawthorne dealing in bonds of the City?
- A. Now, when you say "a good many" I don't think there were a good many, and again I want to try to answer your questions but you must remember this is a long time ago and I want to be as factual as I possibly can, and be as directly responsive to your questions as I can.

You say "a good many?"

- Q. Well, were there other employees that you personally know of in the City that were dealing in these bonds, Mr. Travers?

  A. Yes.
  - Q. That is good enough. [233]
  - A. Yes, sir.

Mr. Bouchard: All right, that is all. Thank you. Mr. Travers.

### Cross-Examination

By Mr. Sullivan:

- Q. Mr. Travers, you testified that you sold bonds to Mr. Baumgardner? A. Yes, sir.
- Q. Did you sell bonds to him as a representative of Crowell, Weedon & Company, or did you sell your own personal bonds to him?
  - A. Crowell, Weedon.
- Q. The records of these series of sales would be in the records of Crowell, Weedon & Company, would they not, Mr. Travers?
  - A. Yes. I will answer that question, yes.
- Q. As fiscal agent for the City of Hawthorne between the years 1935 and 1940, did you know whether the City of Hawthorne from the records of the bondholders, that is, the people who purchased the bonds and the cost when you turned them in?
- A. They would have kept records but for your information, these bonds were sold originally—they were sold both by underwriters and then distributed by the underwriter's again to various clients and in the process of collecting [234] bonds, one of the procedures would be to send these bonds in and to send these in by registered mail with draft attached, and in many cases the officers of the City would have no direct way of knowing specifically who was the owner of bond number so and so.

It may have been reflected in their books as coming from the bank or from dealers. The bonds would

be recorded as being presented by a dealer or a bank as distinguished from the individual who actually owned them.

- Q. Crowell, Weedon & Company was the fiscal agent for Hawthorne, starting in what year?
- A. Either 1935 or 1936. I don't remember. It was thereabouts, either one of these two years.
- Q. And prior to that time, was there much dealing by Crowell, Weedon & Company in Hawthorne bonds?
  - A. Yes, we were quite active in trading then, yes.
- Q. When was Crowell, Weedon founded, if you know, Mr. Travers?
- A. In 1932, February, March, or thereabouts in the year 1932.

Mr. Sullivan: That is all.

Mr. Bouchard: That is all, Mr. Travers, thank you.

The Court: You may be excused.

(Witness excused.)

Mr. Sullivan: Mr. Baumgardner, will you resume the [235] stand?

Whereupon,

### M. R. BAUMGARDNER

called as a witness for and on behalf of the Petitioners, having been previously duly sworn, resumed the stand and testified further as follows:

# Cross-Examination (Continued)

By Mr. Sullivan:

Q. Mr. Baumgardner-

The Court: I don't think we can finish tonight. I would like to recess at 4:30 and come back tomorrow morning.

Mr. Bouchard: Off the record, Miss Reporter, please.

The Court: All right.

(Discussion outside the record.)

The Court: Back on the record.

- Q. (By Mr. Sullivan): Let us see, we got up to I think 611 Truro—when did you live there, Mr. Baumgardner?
- A. In the latter part of 1938 or somewhere in 1939.
- Q. Where did you keep the money when you lived there? A. In my belt.
  - Q. All the time? A. Yes, sir.
  - Q. What denomination were the bills? [236]
  - A. Oh, I had \$50.00's and and \$100.00's.
  - Q. How big a packet did that make?

- A. Oh, like that (indicating) and you could turn them around.
- Q. And you moved from 611 Truro to 443 East129th Street?A. I believe so, yes, sir.
  - Q. Where did you keep the money then?
- A. I still carried it on me. I was always equipped with a gun and everything else. It was good protection.
  - Q. Why didn't you keep it around the house?
- A. Well, I had been wheeling and dealing in bonds and one day I would have money and the next day I would not have money.
- Q. When were you wheeling and dealing in bonds?

  A. 1935 to 1939 possibly.
- Q. Is this not the same time that you lived at 611 Truro and said that you kept it in a belt?
- A. Yes, we moved there in 1938 or 1939. The other one was 303 East Delaware. That is where we hid it under the rug and I think that was in 1932 or 1933. I am positive it was.
- Q. You testified you got that ring from your lodge?

  A. Yes, sir, the lodge brothers.
  - Q. I think you testified that you got it—
  - A. I got it from eight of them. [237]
  - Q. Do you remember their names?
  - A. Does that make any difference?

Mr. Bouchard: I object to that question as being immaterial and not relevant to any issues in the case.

The Court: What is the materiality?

The Witness: They are all members of the Blue

Lodge and none of them are gamblers and none of them are policemen.

- Q. (By Mr. Sullivan): Can you give us their names? A. No, sir, I will not.
  - Q. Does that ring have any significance?
- A. It is the ring I got when I became a 32nd degree Mason.
- Q. To get back to the case on hand, how much cash on hand did you have in the year—at the date December 31, 1951?
- A. I said \$3,000.00 or \$4,000.00, didn't I, already? I am not sure because I have been spending money on building houses, too, and my own home.
- Q. Didn't you first testify that Mr. Vitello first visited you in 1952? A. Yes.
- Q. And this cash in hand figure has been something that has been coming up in this tax investigation for three years [238] now? A. Yes.
- Q. And you haven't yet been able to decide how much you had at certain points?
- A. Well, I am in trouble with the Federal Government with my job in Hawthorne and I don't know what the dates were or what the monies were. I know that I am dealing with the Western Building & Loan Company. I cannot tell you because I wasn't going back and counting it every day.
- Q. We are interested here with the amount of the cash you had on hand at the end of the years 1941 through 1951, Mr. Baumgardner.

Can you tell us the amount of cash you had on hand at the end of any one of these years?

- A. No, sir.
- Q. These bonds that you purchased, did you purchase any of them direct from the City of Hawthorne?
- A. No, sir, from some of the officials indirectly. We would make exchanges with series. I got all of mine from Tad Travers.
  - Q. Did you hold them until they matured?
  - A. No, sir.
- Q. In the previous trial held in the Southern District of California, did you not testify on June, 1949, as follows:

Mr. Bouchard: What page? [239]

Mr. Sullivan: On page 46.

- Q. (By Mr. Sullivan): "Q. Mr. Baumgardner, how much eash approximately did you have on hand, outside of the bank, in your home or in other places, in 1935?
- "A. Well, I started mostly working with bonds at that time. Sometimes I had money and sometimes I didn't. I could not give you an answer because I don't know the exact date when I started with the bond redemption program out there, and I cannot answer that because if it was possible to buy bonds in those days, then the possibility was that I was down to nothing because I was buying any and all the bonds that I could get.
- "Q. Is it your testimony then that sometimes you had money and sometimes you hadn't?
  - "A. That is correct.
  - "Q. Could there be a period of one year when

(Testimony of M. R. Baumgardner.)
you did not have any money?

A. Could be.

"Q. Two years?

"A. This, I think, carried through the years, I believe 1935 to 1939, or maybe 1940. I don't know the exact years. You buy bonds and you [240] lay them aside until they mature. They pay the money and you get your money and put it right back if you have an opportunity of buying more bonds."

Do you remember testifying to that effect, Mr. Baumgardner?

- A. Well, if it is on that transcript, I must have testified to it but I cannot remember exactly what it is all about. I am trying to give you the facts to the best of my honest ability. I don't think they even did mature. I don't think any of them have matured. If they did, I don't know anything about it.
- Q. You testified that you bought them from Mr. Travers; who did you sell them to?
- A. I bought them—I put them with the officials and they put them in the office and when the money was available they would get it.
  - Q. Who do you mean by "officials"?
- A. Officials of the City of Hawthorne at that time.
- Q. Mr. Baumgardner, you testified on direct examination that you put some articles, some assets rather, in the names of your children rather than in your own name; what was the reason for that now?
  - A. In case of false arrest.
  - Q. Were you ever sued for false arrest? [241]

- A. No, but almost everyone in Hawthorne was, except me.
- Q. Why did you buy certain items in the childrens' names and yet other items in your own name?
- A. There was no cash in their names, no cash period. It was always hidden. All they could have got was an automobile worth \$1,250.00 or something like that.
- Q. When did you buy the automobile in your daughter's name, do you remember?
  - A. I believe it was in 1946, but I am not sure.
- Q. At that time you had \$1,058.00 in the Peoples Federal Savings & Loan, \$991.00 in the Bank of America, commercial account; \$5,183.00 in the Bank of America, savings account. Didn't you think that—
- A. I can tell you about that. I was using that car most of the time and the police department did not want it in my name, period.
- Q. What was your purpose in buying Trust Deeds, Mr. Baumgardner?
  - A. Buying it at a discount.
  - Q. What was your purpose?
  - A. To get them to pay up and get the interest.
  - Q. To make money? A. Yes.
  - Q. The purpose was investing—investment?
  - A. That isn't investment, is it?
- Q. Yet, you did not think it necessary to report the income from it?

  A. I did report it.
  - Q. What years did you report?

- A. I think it is all down on the reports and forms that I filed with the Federal Government.
- Q. I show you Exhibit 5-E and ask you where on that you recorded any interest income or Trust Deeds or otherwise, Mr. Baumgardner?
- A. I think I was paying interest that offset anything that I was getting here.
  - Q. You did not record it on here?
- A. No, I just balanced my own books in my own mind. I don't think I was beating the Government. I think I was trying to be social and liberal. I don't think I was trying to beat anyone.
- Q. And you stated that you got commission, that you received gratuities rather, for doing private investigations. Did you report that on your tax return?
- A. I think that was covered under other moneys, that is the way I reported it on my income tax.
- Q. What years did you receive these gratuities, Mr. Baumgardner?
- A. I think I have mentioned them on the forms. [243]
  - Q. Do you know how?
- A. I think the exhibits showed the years 1947, 1948 and 1949.
- Q. Did you receive gratuities in any other years, Mr. Baumgardner?
- A. No, I don't think so. I was in the fire department part of the time.
  - Q. How long have you been a police officer?
  - A. Twenty-nine and a half years.

Q. At that time, you had only received these gratuities in 1947, 1948 and 1949; is that right?

A. Yes, sir.

Mr. Sullivan: Your Honor, it is now 4:30, and I am going to go into another matter, so I think this would be a good time to break now.

The Court: All right, we will recess until 9:00 tomorrow morning.

(Witness excused.)

(Whereupon, at 4:30 o'clock, p.m., November 30, 1955, the hearing in the above-entitled matter was adjourned to Thursday, December 1, 1955, at 9:00 o'clock a.m.) [244]

# Proceedings

The Clerk: The Court is in session. Mr. Sullivan: Mr. Baumgardner.

Mr. Bouchard: Before Mr. Sullivan starts, your Honor, I would like to—I cannot find it—but in any event, yesterday I was handed a copy of an amendment to Respondent's answer and it is a copy of an amendment to Respondent's answer for the year 1947, proposing to increase the deficiency.

I suppose I should offer a formal reply to it, but I would like to have counsel state on the record the basis for the alleged increase. I have no idea what it is and I think I am entitled to that information.

The Court: Will you do that, Mr. Sullivan?
Mr. Sullivan: The deficiency is based on the

increased investment in the Beacon Cafe as shown by the testimony of James Staten. Mr. Staten testified that the \$5,760.00 was given to him by Mr. Baumgardner. We did not have this as part of Mr. Baumgardner's investment in the cafe.

Additionally there was \$2,000.00 handed to him, he said, as cash on hand. The book showed \$2,950.00 as additional investment and cash on hand, and we did not have him charged for that, so we increased the amount—we increased it by the amount of \$5,760.00 and \$2,950.00.

Mr. Bouchard: That is sufficient. It is a [247] sufficient statement as to what it is, yes.

The Court: Before we start, I would like to finish this case by noon.

Mr. Sullivan: I will only be about half an hour or an hour.

The Court: Thank you.

Whereupon

### M. R. BAUMGARDNER

called as a witness for and on behalf of the Petitioners, having been previously duly sworn, resumed the stand and testified further as follows:

# Cross-Examination (Continued)

By Mr. Sullivan:

Q. Just when did you acquire the bonds, Mr. Baumgardner, the City of Hawthorne bonds that you were dealing in?

- Λ. Ever since they became available. It was, I believe, in 1932, 1933, 1934.
- Q. Didn't you testify it was from 1936 to 1939 that you acquired the bonds in a previous trial?
- A. No, I think I testified as soon as they were available, Mr. Sullivan.
- Q. I direct your attention to page 6 of Mr. Baumgardner's testimony in the previous trial. This is on direct examination by Mr. Bouchard.
- "Q. Now, Mr. Baumgardner, do you know, what, if any, [248] profit you made in buying and selling bonds of the City of Hawthorne?
  - "A. Do you mean the total amount of moneys?
  - "Q. Yes.
- "A. I imagine it would run between \$12,000.00 and \$15,000.00.
  - "Q. And that was during what period of time?
- "A. Oh, I would say from 1936 or 1937 until 1939, maybe 1940."

Do you not remember so testifying in the criminal trial, Mr. Baumgardner?

- A. If it so states in that testimony, yes, sir.
- Q. Are you changing your testimony now to say that you acquired them before 1936, 1937 or 1939?
- A. I was under the impression that I testified also that I bought these as soon as they were available, Mr. Sullivan, and I have a pretty good memory.
- Q. Before 1935 you had how much invested in bonds approximately?

  A. Almost all I had.

- Q. What would your best estimate of that amount be, Mr. Baumgardner?
  - A. \$2,000.00 or \$3,000.00.
- Q. Yesterday I showed you Exhibit 5-E which I now show you and I asked you if there was any interest shown on this [249] return.

Your answer was—and correct me if I am wrong—to the effect that you paid out interest in about the same amount that year, so you thought they balanced off.

A. That is true.

- Q. I direct your attention to Exhibit 1-A, the schedule of assets and liabilities. A. Yes.
- Q. You have no liabilities in the year 1946. I want to ask you now if you had additional assets on which you owed money, rather than what appear on there?
  - A. Well, I must have. I was buying property.
- Q. In this proceeding we are attempting to determine your income by using the net worth method. If you had other assets, we are very much interested in finding out what they were.
- A. They were probably liabilities instead of assets, Mr. Sullivan.
- Q. Do you know what the liabilities were where you paid this interest in the year 1946?
- A. Well, I was buying two or three pieces of property, and I was paying interest on those. In fact you mentioned one which I had forgotten about and which was the subject of mortgage. All I was allowed to pay was \$20.60 a month; that is [250] one.

I might have others, but I cannot remember the names of them.

Q. I show you Syndicate Mortgage here in Exhibit No. 1-A, and note at the end of 1941, the balance was \$1,252.35, and at the end of 1942, the balance was \$246.15, and at the end of 1943 the balance was zero.

I ask you if that is the same Syndicate Mortgage interest payment you are talking about?

- A. It must be.
- Q. Then you did pay Syndicate Mortgage in 1946, interest to them, that is?
  - A. It is possible, whatever the years were.
- Q. I show you Exhibit 3-C. You will note that 1946 the amount is \$1,093.39 interest income and is it your testimony that you had interest payments to offset that?
- A. No, sir; not on this schedule, no, sir, but I had invested moneys.
- Q. I think your testimony was, Mr. Baumgardner, that the commissions listed on your returns for the years 1947, 1948 and 1949 included interest income; is that correct?
- A. Yes, sir; any and all moneys I made over and above my salary.
- Q. Now, in 1950 and 1951, you did not report commission income, is that correct?
  - A. I was out of work for about a year. [251]

The Court: The fact that you were out of work would not have cut off whatever intrest payments

were being made to you, would it? It would not have any effect on your interest income?

The Witness: I believe in those years, your Honor, I was paying money all out and I wasn't making anything at all. I was building four houses plus my home and I wasn't making anything. Actually I was paying it all out, it was expenditure.

- Q. (By Mr. Sullivan): I show you Exhibit 10-J. You have the City of Hawthorne listed for \$3,485.50. Isn't it true that you earned that income?
  - A. That was prior to August.
- Q. But you earned that income in that year 1950? A. Yes.
- Q. Isn't it true that you received \$626.18 interest income as shown on Exhibit 3-C?
  - A. That is what it says on the report.
- Q. Is it true that in 1951 you earned \$6,061.70 from the City of Hawthorne as shown in the tax returns?
- A. That is when they reimbursed me for my being out of work and reinstated me, and I paid income tax on that.
- Q. Isn't it true that you did get paid from the City of Hawthorne? [252]
- A. I always did get paid. I had twenty-nine years' service. I have never been convicted of anything. There never were any charges. There are some rotten politicians there, your Honor, who want me out and sometimes I got paid for a lot of times that I wasn't there.

- Q. Did you earn commissions from investigations in 1950 or 1951?
- A. I have been in litigations ever since 1950. I do not believe I have ever had a chance to make a contact with any one, Mr. Sullivan.
- Q. The costs of litigation are as stated in Exhibit 2-B, legal fees reinstatement \$800.00 in 1950 and \$370.00 in 1951, is that true?
- A. I don't know whether your records are true or not. I cannot remember the figures but I have been paying out ever since I can remember in 1950, attorneys fees and all that goes with them.

Mr. Sullivan: Will you mark this as Respondent's Exhibit next in order for identification, please?

The Clerk: RR.

(The document above referred to was marked Respondent's Exhibit RR for identification.)

- Q. (By Mr. Sullivan): I show you Respondent's Exhibit RR marked for identification and ask you if that isn't a copy of a letter [253] you wrote to the City of Hawthorne about the investigation in Gardena?

  A. It speaks for itself.
  - Q. It is? A. Yes, it is.
- Q. You admitted receiving investigation commissions in 1950 and 1951 in the amount of \$400.00 or \$500.00?
- A. I will give the exact testimony here as I did in the criminal case.

The Court: What was that?

The Witness: I was doing some investigation for Fred Carr, who owned the buildings. Fred Carr did say he would give me \$400.00 or \$500.00 to conduct this investigation. He promised me and promised me; I have seen him a dozen times—that during his investigation he would pay me, but he was always too drunk, so the way he died, well, probably he bought twelve cases of whisky and locked himself in his room and he died there and I have never got his money.

That is when the Hawthorne Press and the rotten politicians who are in the job now were doing everything to have me dismissed. I was dismissed without charges and had to go to the Appellant Court of California to get reinstated. I did write that letter.

- Q. (By Mr. Sullivan): Do you understand the verb "receive" to be the present [254] tense?
  - A. I don't know what you mean.
  - Q. This club is it a-
  - A. It is a poker club.

Mr. Sullivan: At this time, your Honor, I would like to offer Exhibit RR for identification in evidence.

Mr. Bouchard: No objection.

The Court: Admitted.

(The document heretofore marked Respondent's Exhibit RR was received in evidence.)

Q. (By Mr. Sullivan): What years were you doing the extra work in the movies that you testified you received \$40.00 a day for?

- A. I started in 1928 and probably ended up in two or three years.
- Q. Do you now recollect how much money you made in any of those years?
- A. No, it would average about \$40.00 a day any time I was there.
  - Q. Did you work one day?
  - A. It all depends on what the picture was.
- Q. Did you report this on your income tax returns, Mr. Baumgardner? A. No, sir.
- Q. You testified on direct examination [255] that you expended money to renovate houses at 158 and 162 Ramona and at 611 Truro?
  - A. Yes, sir.
- Q. Do you remember what year you spent money to renovate 158 Ramona?
- A. It was in the beginning when I bought it. I don't know the date or the year even. The whole thing was riddled with termites. I could not sell it until I had repaired it, so I started to do that.
- Q. Did I understand your testimony that after that—you kept the money in the house until 1932 and after that you carried a money belt?
  - A. Yes, sir.
- Q. Is that the same way that you testified in the criminal trial?
- A. I don't know what I testified. I think I said I kept it around the house. I don't think there was any place mentioned except on one particular occasion.
  - Q. I direct your attention to questions that

were asked in the previous trial and ask you if you testified as follows:

Mr. Sullivan: This is page 40, Mr. Bouchard.

Mr. Bouchard: Thank you.

- Q. (By Mr. Sullivan): "Q. (By Mr. Hockman): At the end of 1946—— [256]

  "A. Well, 1946——

  - "Q. The end of 1946?
- "A. I don't remember. You are going back too far.
  - "Q. Where did you keep the money, sir?
  - "A. All over the place.
  - "Q. Under the rug?
- "A. All over my house. Pardon me, your Honor, under the rug, in coffee cans and in tobacco cans. In fact, I had it all over the house, any place I could hide it."

Did you so testify in the criminal trial, Mr. Baumgardner?

- A. Yes, I did.
- Q. You did not mention the money belt in the criminal trial, did you? A. No, I did not.
  - Q. Did you forget about it?
- A. No. I got quite a bit of publicity so I stuck with it because it was true. No one wants to believe the truth, but I stuck with it.
  - Q. When did you keep—strike that, please.

When did you complete your dealings in bonds in the City of Hawthorne?

A. In the latter part of 1949 or close to it.

- Q. You mean 1949? [257]
- A. 1939. I don't think it was in 1940. I think it was completed in 1939.
- Q. Isn't it true that you applied for a loan of \$200.00 from the Bank of America in 1937 and were turned down, Mr. Baumgardner?
  - A. It could be.
- Q. Did you apply for a loan of \$200.00 in 1938 to make a trip on vacation to Oklahoma?
- A. It could be. I tell you I bought so many bonds, I hadn't a nickel.

The Court: Do you mean those bonds were not sufficient security to apply for a small loan?

The Witness: Mr. Posterweight and Mr. Travers came out in 1942 or 1943 for the City of Hawthorne doing research on bond redemptions. I was assigned as a sergeant to haul Mr. Posterweight and Mr. Travers to any and all meetings or places for the purpose of picking up City of Hawthorne bonds.

After they had been appointed as fiscal agents of the City of Hawthorne, the City Council and the City attorney and the two special agents or the fiscal agents sat down and drew up condemnation proceedings against any and all dwelling properties, which I think was fifty-five per cent delinquent in the City of Hawthorne.

After this condemnation proceedings was finished, then they advertised that an auction would be held and at [258] that time all properties that were listed would be sold at an auction, and all such

(Testimony of M. R. Baumgardner.) moneys taken in from the auction would be used to pay off those City of Hawthorne bonds, 1959.

City employees, such as policemen, firemen, treasurer, city clerk, building inspector, city attorney and all the council did participate in the buying of these City of Hawthorne bonds, which took a period of years.

All pieces of property were auctioned off and that is the way the money was handled and the way we were paid on our bonds and why it took so long.

The Court: You held them until the property was sold?

The Witness: Yes.

The Court: And then when some of the bonds came in——

The Witness: In other words, we were close enough that they would say, "How many of these do you want"?

And I would call Mr. Travers, whatever they were, and say, "Which series are the best to take"?

When these things came along and they did pay me so much money, I would take it right back in bonds.

- Q. (By Mr. Sullivan): Did you testify that when you prepared your 1951 return, you did not know about your interest in the Embassy Club proposition? [259]
  - A. All I knew is what Mr. Vitello told me.
- Q. Mr. Vitello did not contact you until August of—— A. 1952.
  - Q. It was received by the Government on March

17, 1952; at the time you prepared your return to forward it to the Government, did you know anything of your interest in the Embassy Club?

- A. I had heard about it through the Grand Jury of Los Angeles County.
- Q. On direct examination you stated substantially that you did not put money in banks because you were afraid you would be sued for false arrest, is that correct?

  A. Yes, sir.
- Q. When was this period that you had this fear of being sued for false arrest?
- A. Up until the time I started putting up the buildings and putting my money into buildings.
  - Q. Do you have any idea when that period was?
- A. I don't know. As soon as I started getting a little money on the bonds, I might have had enough in there to take over things but it never got too big until I was building the four places and my home. I was in and out of there and the Deeds and mortgages were paying off.
- Q. Then you lost your faith in banks, is that right, Mr. Baumgardner? [260] A. Yes, sir.
- Q. Who handled the vice matters in Hawthorne with the police department, when you were chief of police, Mr. Baumgardner? A. I did.
- Q. You testified on cross-examination yesterday that in 1946 the De Soto was put in the name of your daughter because you used it in police work?
- A. I believe that was the year. I have always done it since that. It made it double or treble for

(Testimony of M. R. Baumgardner.) the cost of insurance if you had put it in your own name, so I put it in my daughter's name.

Q. How old was your daughter at this time in 1946, Mr. Baumgardner?

A. She is eighteen now. I am not very good at figures.

Mr. Sullivan: That is all.

Mr. Bouchard: We are going to finish by noon all right.

I think perhaps it is fair to point out to your Honor that what is in this record is just information, of course, at this stage.

In the exhibit showing the schedule of interest income which was stipulated was earned by the Petitioner in the year 1950, the total amount is \$626.18. The Commissioner [261] has determined, in determining the tax liability of the Petitioner, that during that year, 1950, he was entitled to additional deductions which did not appear in his return in the amount of \$1,728.00. That appears in the deficiency letter which is part of the record in this case.

In 1951 the interest earned by the Petitioners and credited in the bank account is the sum of \$550.53 and the Commissioner in his deficiency letter has determined that the taxpayer is entitled to an additional deduction for taxes and legal fees of about \$834.13, which he did not take into account.

Mr. Baumgardner just one or two questions.

### Redirect-Examination

## By Mr. Bouchard:

- Q. Do you belong to any service clubs in the City of Hawthorne? A. Yes, sir.
  - Q. What clubs? A. The Brotherhood Club.
- Q. How long have you been a member of the Rotary Club, Mr. Baumgardner?
  - A. Eighteen years.
  - Q. Are you still a member? A. Yes.
- Q. I understand you met Mr. Travers while acting as his [262] chauffeur in connection with the Hawthorne affairs?

  A. That is right.
- Q. Did you buy any of these Hawthorne bonds from anyone at Crowell, Weedon other than Mr. Travers?
  - A. I bought them all from Mr. Travers.
- Q. Now, there was some testimony by Mr. Vitello to the effect that Mr. Baumgardner told him that you were quite a gambler; are you?
- A. I do not even know one card from the other. I back a horse once in a while.
  - Q. You bet on a horse now and again?
  - A. Yes.
  - Q. Do you ever go to Las Vegas?A. Yes, once in a while.

  - Q. But you are not a gambler?
- A. No, sir; I don't know the slightest thing about it. Let me correct that. I do know draw poker

(Testimony of M. R. Baumgardner.) from stud poker, what they are playing but I do not know how to play it.

- Q. You told Mr. Sullivan in answer to one of his questions that you could not tell him the amount of cash you had on hand at the end of any one year starting with 1941. Can you make any reasonable estimate?
- A. I testified in the criminal court that it was \$6,000.00, \$8,000.00 or \$10,000.00. I don't know exactly what it was. [263]
- Q. Did you know at the end of each of the years involved in this proceeding that you had more and substantially more cash on hand than \$100.00?
- A. I always had \$6,000.00, \$8,000.00 or \$10,000.00. After I got into this bond business I never had anything in my pocket.
- Q. Let me ask you this. I think you have indicated it perhaps but I want to be sure and get it established in the record.

Was there, during the years 1930 and 1931 which are the years when this redemption program of the Hawthorne City bonds was being worked out, was there a good deal of trafficking in these bonds by police officials and employees of the City of Hawthorne?

A. Yes, sir; all that had any money at all. In fact, they were holding these meetings so that the public could get aware of it and participate in it if they wished.

Mr. Bouchard: In the interest of saving time, may I approach the witness?

The Court: Certainly.

Mr. Bouchard: That is all, your Honor.

Mr. Sullivan: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Bouchard: I know your Honor is waiting for me [264] and I thought I had something I wanted to do and I will probably get half way down the street and remember it, but I think, your Honor, I will have to say that that is all.

The Court: Mr. Sullivan, do you want to file the amended answer or have you done that?

Mr. Sullivan: I filed it with the Clerk yesterday.

I would like at this time to have it stipulated that if Mr. Perkins was called as a witness, he would testify as follows——

Mr. Bouchard: I would like one further stipulation with respect to that and that is that Mr. Perkins is no longer employed by Crowell, Weedon and since that, Crowell, Weedon doesn't have records prior to the year 1936 with reference to these Hawthorne bond transactions, is that correct?

Mr. Sullivan: That is correct.

Mr. Bouchard: All right.

The Court: His testimony will be admitted.

The Clerk: SS, your Honor.

(The document above referred to was marked Respondent's Exhibit SS and received in evidence.) Mr. Sullivan: That is all for the Respondent, your Honor.

The Court: I would like to dispose of this case by deciding it from the bench but I am not going to because [265] there are so many stipulations.

Mr. Sullivan: I was just going to make such a motion and ask your Honor if he would give—

The Court: Sixty days for filing briefs and thirty days to reply.

Mr. Bouchard: Very well, thank you.

The Clerk: Thank you, gentlemen.

The Clerk: If your Honor, please, counsel for the Respondent has charge of all the exhibits 1-A through 17-Q and Respondent's Exhibits R through SS.

That is the complete calendar setup for this session for the Court in Los Angeles.

(Whereupon, at 9:55 o'clock a.m., Thursday, December 1, 1955, the hearing in the above-entitled matter was closed.)

Filed December 12, 1955, T.C.U.S. [266]

[Title of Tax Court and Cause.]

Docket Nos. 49897, 49899

### CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 21, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record on Review," including joint exhibits 1-A to 17-Q, inclusive, attached to stipulation of facts, respondent's exhibits R to Z, inclusive, AA to EE, inclusive and GG to SS, inclusive, (FF marked for identification only and not left with record), in the cases before the Tax Court of the United States docketed at the above numbers and in which the petitioners in the Tax Court have initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court cases, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 3rd day of December, 1956.

[Seal] /s/ HOWARD P. LOCKE, Clerk, Tax Court of the United States [Endorsed]: No. 15397. United States Court of Appeals for the Ninth Circuit. Milford R. Baumgardner and Pearl E. Baumgardner, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed December 17, 1956.

Docketed: December 24, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.